EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Financial Markets
Securities markets

Request to ESMA for technical advice on the implementation of the amendments to the Markets in Financial Instruments Directive II, Undertaking for Collective Investment in Transferable Securities Directive, and Alternative Investment Fund Managers Directive, in the context of the Retail Investment Strategy

1. Context

1.1. State of play of the Retail Investment Strategy

On 24 May 2023, the Commission adopted the Retail Investment Strategy (RIS'), with the aim to enhance retail participation in capital markets to enable the consumers easily and in a simple way to benefit from investment opportunities offered by capital markets. The legislative proposal included a comprehensive set of measures to make a sizeable difference to retail investors: from ensuring that investments in financial instruments bring value for money to modernising disclosures, reconsidering suitability and appropriateness tests, addressing issues with marketing communication and finfluencers' actions, tackling conflict of interest, improving supervision and supporting investment firms' staff knowledge and competence and financial literacy. In addition, amendments to the UCITS Directive and AIFMD establish a dedicated framework to prevent undue costs from being charged to investors. The importance of retail investor participation in capital markets was further reaffirmed in the Commission's communication on the Savings and Investment Union[1] (SIU). Furthermore, ESMA, in its March 2026 report on the retail investor journey, stated that enhancing the investor journey was one of its flagship projects to facilitate simplification and reduce burden for participants in financial markets.

The RIS included a package of legislative proposals:

i) an **Omnibus Directive,** which amends Directive 2014/65/EU ('Markets in Financial Instruments Directive II' or '**MiFID II'**), Directive (EU) 2016/97 ('Insurance Distribution Directive' or 'IDD'),

[1] Factsheet: Savings and Investments Union - Finance - European Commission[2] Better regulation - European Commission

Directive (EU) 2009/65/EC ('Undertaking for Collective Investment in Transferable Securities Directive or '**UCITSD**'), Directive 2011/61/EU ('Alternative Investment Fund Managers Directive' or '**AIFMD**'), and Directive 2009/138/EC ('Insurance and Reinsurance Directive' or '**Solvency II'**), and

ii) ii) a **Regulation** amending Regulation (EU) No 1286/2014 ('Packaged Retail and Insurance-based Investment Products Regulation' or '**PRIIP**S**R**').

The European Parliament and Council reached a provisional agreement on the RIS on 18 December 2025. The compromise was approved by the Council in COREPER on 5 June 2026 and by the European Parliament in ECON on 23 June 2026. The adopted legislative texts are still subject to lawyer-linguists' review, but the Commission does not expect any substantive changes. The completion of the lawyer-linguists work is expected in the course of the summer or at the latest in September. Final votes by the Council and the European Parliament are expected in Q4 2026, which means the publication of the Retail Investment Strategy in the Official Journal ('OJ') should occur at the latest in January 2027.

Member States will have 24 months from the date of entry into force of the Omnibus Directive to transpose the text into their national laws and regulations. They will have to apply the provisions of the legal text as from July 2029, assuming that the Omnibus Directive is published in January 2027 and that a 30-month implementation period will apply following the date of entry into force.

A number of provisions laid down in the above-mentioned Omnibus Directive need to be further specified in level 2 ('L2') measures. Some of those L2 measures will be implemented via delegated regulations and others via delegated directives, which will also require transposition into Member States' laws.

This Call for Advice concerns the amending provisions of MiFID II and UCITSD /AIFMD. In its technical input for this Call for Advice and other possible future calls for advice addressed to ESMA at a later point under RIS, when supplementing or specifying similar or identical legal concepts, ESMA is requested to ensure full consistency across all concerned legal acts, i.e. across delegated acts, regulatory technical or implementing standards of the same primary legislative act and across primary legislative acts that refer to these legal concepts. In certain cases, where required under the relevant provision of the Omnibus Directive, ESMA shall coordinate with EIOPA (for their work on the Directive (EU) 2016/97 on insurance distribution) and the Joint Committee ("JC") of the ESAs (for their work on PRIIPSR) and conduct prior consumer testing. Additionally, in other cases and with the objective of ensuring to the extent possible consistency across the different legal frameworks, including also under Directive (EU) 2016/97 on insurance distribution, ESMA is invited, where relevant, for its technical input under this Call for Advice, to also coordinate with EIOPA. Efficient coordination and strong adherence to the deadlines would be essential to ensure the timely adoption of the relevant L2 and its application by stakeholders. A more detailed planning is attached in the Annex to this Call for Advice. In its technical input, ESMA is also required to act fully in line with the principles of Better Regulation and the Commission simplification objective[2].

Under RIS, the Commission is empowered to adopt a number of delegated acts in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU). To ensure a smooth application of the legislative provisions, the application date of such delegated acts needs to be aligned with the date of application of the provisions they are intended to supplement or specify. Based on an estimated date of the publication of the Omnibus Directive in the OJ in January 2027, most L2 measures should be applicable as from July 2029.

[2] Better regulation - European Commission

To align with the mid-2029 deadline, ESMA will be required to submit its advice to the Commission by **1 October 2027** to also allow time for the review and timely adoption of the L2 measures by the Commission and the necessary adjustment time for the industry.

This Call for Advice is being issued to ESMA in advance of the final adoption of the Omnibus Directive, based on the assumption that the legislative act will be published in the OJ without major amendment in January 2027 at the latest. This should allow ESMA to begin work immediately, providing additional time for the preparation of its advice.

2. Scope of the request

With this mandate, in accordance with Article16a(4) of ESMA Regulation[3], the Commission seeks ESMA's technical advice on certain delegated acts to supplement or specify specific provisions of MiFID II, UCITSD and AIFMD. The Call for Advice covers various topics which are further detailed below, as well as in the Annex. The technical advice shall include legal drafting for the relevant recitals, articles and, where relevant, annexes for each of the delegated acts mentioned in sections 3 to 4 of this mandate.

To simplify the adoption of the proposed L2 measures, ESMA is requested to group the mandates in two delegated acts (a delegated regulation (Section 3) and a delegated directive (Section 4)).

The Omnibus Directive is expected to be published in January 2027 at the latest and should be applicable 30 months later. Unless specified separately in this mandate, **ESMA is invited to submit its technical advice by 1 October 2027 at the latest**. This deadline should enable to take into consideration the subsequent timeline for the adoption of the delegated acts by the European Commission (which implies the consultation of the Expert Group of the European Securities Committee (EGESC) and the publication of the draft delegated acts on the Have-your-say portal for four weeks, for stakeholders' feedback). This timeline also takes into account the scrutiny period by the co-legislators, and some implementation time for investment firms.

Overarching principles

In developing its technical advice, ESMA should take account all of the following principles:

- **Increased retail participation in capital markets:** The technical advice should contribute to the Commission overall objective to ensure a growing participation of retail clients in EU capital markets that are more transparent, accessible and competitive and provide better value for money, while maintaining a high level of investor protection.

- **Proportionality:** The technical advice should not go beyond the mandate as set out in this Call for Advice. ESMA should prepare input containing proportionate requirements, practicably easy to put in place and commensurate with the objectives of the Omnibus Directive, while, at the same time, adhering to the principles of simplification, efficiency and avoidance of undue regulatory burden on investment firms and citizens. For instance, any excessive or overly complex disclosure may deter retail investors from investing, while being costly for investment firms to comply with.

- **Comprehensibility:** ESMA should provide, where relevant, comprehensive advice on subject matters covered by the mandate in an easily understandable language. All recitals, articles and, where relevant, annexes should be drafted in a succinct manner, in accordance with the standards applicable to the Commission legal acts and in line with the Interinstitutional Style Guide[4]. Recitals should not repeat legal requirements but rather set out reasons for why these requirements have been put forward. Each

[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
[4] Interinstitutional Style Guide

article should in principle have a corresponding recital. Any disclosures for consumers need to be easily comprehensible by the target audience and tested with consumers where feasible and relevant under the respective ESMA's mandate.

- **Coherence**: ESMA should ensure coherence when developing concepts and requirements that concern different parts of the Omnibus Directive, in particular where those are included in different legal acts. This is in particular the case for the 'value for money' concept that is set out in MIFID II, AIFMD and UCITSD, as well as costs related topics in the context of the aforementioned legislations and PRIIPSR. The advice should also be coherent with the wider regulatory framework of the Union.

- **Simplification**: When working on its technical advice, ESMA should consider more broadly the simplification objectives and, more specifically, where the existing rules could benefit from greater simplification to lower the costs of compliance for stakeholders while ensuring that the policy objectives of the regulatory framework are achieved. .

- **Consultation**: When preparing its technical advice, ESMA is invited to consult relevant stakeholders (e.g., consumer associations, capital market participants, , academics, national competent authorities) in an open and transparent manner and provide a feedback statement justifying its choices vis-à-vis the main arguments raised. ESMA's technical advice should consider the different opinions expressed by stakeholders.

- **Evidence**: ESMA should justify its technical advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each of those options. ESMA should provide an in-depth justification for its choices in particular for the elements relating to the 'value for money', which is a new concept introduced by the Omnibus Directive, and any related disclosures. The results of this assessment should be submitted with the advice to the Commission.

ESMA should provide sufficient factual data backing the analyses. It is important that the presentation of the technical advice makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

3. Technical advice for the Commission delegated regulation under MiFID II, Commission delegated directive under UCITSD and Commission delegated regulation under AIFMD

All the elements presented in this section should be part of a single Commission delegated act for each sectoral legislation, i.e. for MIFID II (a Commission delegated regulation), for UCITSD (a Commission delegated directive) and for AIFMD (a Commission delegated regulation).

a) Value for money: Product Governance under MIFID II and rules of conduct under UCITSD and AIFMD

The Omnibus Directive strengthens the existing product governance framework of MiFID II, and the rules of conduct under AIFMD and UCITSD, by adding an obligation for investment firms – manufacturers and distributors - to assess the 'value for money' ('VfM') of packaged retail and insurance-based investment products (as defined under Regulation (EU) No 1286/2014) they manufacture or distribute to retail clients, and for UCITS and AIFs they manage. It aims to prevent financial products which do not offer VfM from being released to the market and sold to retail investors. It should also ensure, when the regular assessment detects that a financial product no longer offers value for money, that the investment firms take appropriate action (e.g. make changes to the product or withdraw it from the market) to prevent future detriment to existing and prospective clients.

The VfM assessment seeks to establish whether at the time of the assessment or of a regular review, the identified costs, charges and inducements of a financial product are justified and proportionate, compared to those of similar financial instruments of a peer group, having regard to the intended benefits for the retail client. The VfM assessment should result in the exclusion of outliers, i.e. the financial instruments that are at a significant distance from the average costs and performance of financial instrument in the peer group, to the detriment of the client, taking into account also other benefits for the retail client.

In accordance with Article 16-a(12b) of MiFID II, Article 14(2) of UCITSD and Article 12(3) of AIFMD, as amended by the Omnibus Directive, the Commission invites ESMA to provide technical advice on the specifications necessary to the product governance requirements referred to in paragraphs 1, 2, 2a, and 3 of Article 16-a of MiFID II, paragraphs 1b, 1c, 1ca, 1e, 1ea of Article 14 of UCITS D and paragraphs 1b, 1c, 1ca, 1e, 1ea of Article 12 of UCITSD as introduced by the Omnibus Directive, concerning the assessment of value for money for retail clients to assist the Commission in developing and adopting a delegated act.

In particular, ESMA is invited to provide technical advice, by proposing detailed criteria and, where appropriate, how those criteria would need to be applied, addressing the following aspects:

- criteria to select eligible financial instruments for the composition of peer groups to ensure a representative number of financial instruments in those peer groups in the Member State or Member States where the relevant financial instrument will be distributed, and, where feasible and proportional, in other Member States where comparable financial instruments are distributed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable financial instruments, and taking into account the market size;
- criteria to determine whether the financial instrument offers value for money to retail clients where there are no or very limited comparable financial instruments available and therefore no relevant peer group can be identified,
- criteria to specify how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the relevant peer group,
- criteria to determine whether the value for money of a financial instrument is at a significant distance from the average costs and performance of the financial instruments in the relevant peer group to the detriment of a retail client, also with a view to determining whether the costs are proportionate and justified,

The criteria to be determined should ensure a fair and balanced comparison methodology of all the different costs (including inducements) and components, across financial instruments concerned by the concept of value for money. The criteria should in particular take into account the fact that distribution costs (including inducements) can be charged either as part of product costs or directly by distributors.

ESMA should ensure that in preparing its technical input on value for money, it also considers its work under the mandates to develop regulatory technical standards (RTS) and implementing technical standards (ITS), and the work of the Joint Committee of the ESAs on PRIIPSR RTSs, on distribution costs, ensuring coherence of input across the various mandates.

In its work, ESMA should take into account all relevant provisions of MiFID II as amended by the Omnibus Directive, in particular Articles 16 and 16-a, and Article 14 of UCITS D and Article 12 of AIFMD, all relevant recitals of the amending Directive and all relevant provisions of Commission Delegated Directive (EU) 2017/593.

Aligning requirements, where warranted, for investment firms, as referred to in MiFID II, and for UCITS management companies and AIFMs is appropriate, considering that Article 16-a(b) of MIFID II provides that *"An investment firm which offers or recommends financial instruments which it does not manufacture, may rely on the manufacturer's value-for-money assessment if the latter takes into account all costs and charges, including inducements, related to the distribution. In such a case, the investment firm shall assess whether the financial instrument meets the target market's objectives and needs".*

In conducting its work, ESMA should:

- Consult widely with stakeholders, including NCAs, consumer organisations, industry representatives and data providers, to ensure the criteria are practical, proportionate, and effective, enabling a non-biased and complete comparison of costs (including inducements) and relevant components of the financial instruments subject to value for money.
- Consider existing ESMA guidelines on product governance to promote consistency and avoid duplication.
- Address cross-border dimensions, particularly for firms operating in multiple Member States.
- Ensure an alignment, wherever possible, in its advice on value for money for MiFID II, UCITS Directive and AIFMD.
- Consider costs and charges, performance, methodology and requirements under the Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)[5] .
- Ensure that the criteria to be determined are sufficiently detailed to allow a real comparison of similar financial instruments that qualify as packaged retail investment products While such comparison should produce effective and positive results for retail investors and should avoid biased comparisons, the criteria should also not be excessively burdensome to implement for investment firms
- Take into account the specificities of various distribution models and target markets of investment products.

Specifically, ESMA should take into account:

  - The feasibility of applying the criteria, considering data availability;
  - Sufficient granularity of the criteria to allow for a fair comparison between products with similar characteristics and to maintain a broad range of investment options;
  - Considering the existing widely endorsed and adhered to practices in the market.

b) Inducements

MiFID II tightened rules on inducements for portfolio managers and independent advisors, by prohibiting firms to accept and retain any inducements for those services. The Omnibus Directive sets rules on inducements for other investment services, and in particular for non-independent advice, by introducing a new "inducements test" to ensure that fees, commissions, or non-monetary benefits do not impair firms' duty to act in the best interests of retail clients, addressing persistent conflicts of interest and uneven investor protection across the EU.

In light of the changes introduced by the Omnibus Directive to the inducement framework, including the inclusion of certain provisions currently set out in level 2 in level 1, ESMA should review the current level 2 to ensure consistency with the amended level 1.

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[5] Regulation - 1286/2014 - EN - PRIIPs Regulation - EUR-Lex

Pursuant to Article 24a (8b) of MiFID II, as amended by the Omnibus Directive, the Commission invites ESMA to provide technical advice assessing the need to specify, and, where deemed appropriate, setting out:

(a) the criteria for assessing compliance by firms receiving inducements with their obligation to act honestly, fairly and professionally in accordance with the best interests of clients, in respect of independent investment advice, portfolio management, investment research, underwriting, and placing of financial instruments.

(b) the criteria for assessing whether an inducement provides a tangible benefit to the client (as referred to in Article 24a(2)(b) of MiFID II, as amended by the Omnibus Directive);

(c) the criteria for assessing whether an inducement is proportionate to the value of the financial instrument and the level of service provided (as referred to in Article 24a(2)(c) of MiFID II, as amended by the Omnibus Directive).

In its work in the area of inducements, ESMA should include any necessary amendments to the rules on inducements set out in Delegated Directive (EU) 2017/593 to ensure alignment with MiFID II as amended by the Omnibus Directive. ESMA should take into account all relevant provisions related to inducements of MiFID II as amended by the Omnibus Directive, in particular Articles 4(1) (68b) (definition of an inducement) and (68c) (definition of an inducement scheme), 16-a, 24, 24a and 24b, all relevant recitals of the Omnibus Directive and all relevant provisions of Commission Delegated Regulation (EU) 2017/565. In particular, ESMA should take into account that the Commission's mandate above should be understood as being limited to specific narrowly defined areas, considering the specificities of different sectors and products, where there is a need to ensure consistency and legal certainty regarding the application of the rules on inducements.

The determination of the criteria as mentioned under points a), b) and c) above, could include, where appropriate, how those criteria would need to be applied by investment firms for their assessment.

In conducting its work, ESMA should:

- Consider the overall objective of simplification and burden reduction.
- Consult widely with stakeholders, including NCAs, consumer organisations, and industry representatives, to ensure the criteria are practical, proportionate, and effective.
- Consider existing ESMA guidelines on inducements under MiFID II to promote consistency.
- Address possible cross-border dimensions, particularly for firms operating in multiple Member States.
- Consider the need to ensure positive results for retail investors.

c) Simplification and burden reduction in the retail investor journey

The Commission invites ESMA to provide technical advice on measures to streamline the investor journey, with simplification and burden reduction, while ensuring that the policy objectives of the regulatory framework are achieved. The advice should focus on identifying concrete and operational measures to reduce unnecessary complexity, administrative burdens and avoidable frictions throughout the investor journey.

In particular, ESMA is invited to assess where existing regulatory or supervisory arrangements may give rise to duplicative, disproportionate or outdated requirements, and to propose targeted simplification measures that would make the investor journey more efficient and accessible for retail investors.

In preparing its advice, ESMA is invited, where relevant for this Call for advice, to build on the recommendations set out its report on the retail investor journey published on 12 March 2026.

Furthermore, in conducting its work, ESMA should:

- Consider the aspect of risk of financial instruments recommended to retail clients and how risk is being presented to retail clients.
- Address possible cross-border dimensions, particularly for firms operating in multiple Member States.

d) Suitability and appropriateness assessment, simple advice, records and agreements

The Omnibus Directive revises the suitability and appropriateness regime to make the assessments more proportionate, more focussed on relevant information (such as portfolio diversification and ability to bear full or partial losses) and more transparent to the clients. In particular, the Omnibus Directive makes it mandatory for investment firms:

(a) to have suitability and appropriateness assessments limited to necessary information;
(b) to explain to their clients the purpose of these assessments and the consequences in case of inaccurate, incomplete or missing information;
(c) to warn their clients when the financial instrument or the investment service is not appropriate, and
(d) to provide their clients with the collected information upon the client's demand.

In addition, in order to facilitate the access to advice, the Omnibus Directive introduces the concept of a "simple advice" limited to well-diversified, non-complex and cost-efficient financial instruments, without the need for investment firms to collect, for the purpose of the suitability assessment, information on knowledge and experience of the client relating the relevant financial instruments or investment services.

For those purposes, in accordance with Article 25(8) of MiFID II, as amended by the Omnibus Directive, the Commission invites ESMA to provide technical advice on how investment firms should comply with the principles set out in paragraphs 1 to 6 of Article 25 of MiFID II, as amended by the Omnibus Directive, when providing investment or ancillary services to their clients and whether Commission Delegated Regulation 2017/565, and in particular Articles 52 to 58 thereof, should be amended to align it with the requirements set out in the Omnibus Directive.

ESMA is invited to provide technical advice covering the following aspects, where deemed appropriate:

(a) the information that investment firms should collect when assessing the suitability or appropriateness of financial instruments and investment or ancillary services for their clients, to ensure that it is limited to what is proportionate and necessary

(b) the criteria to identify and assess "other non-complex financial instruments" that do not require an appropriateness assessment in accordance with Article 25(4), point (a)(vi), of MiFID II, as amended by the Omnibus Directive;

(c) a definition of financial instruments that qualify as well-diversified, non-complex and cost-efficient for the purpose of the provision of "simple advice" pursuant to Article 25 (2), second subparagraph, of MiFID II, as amended by the Omnibus Directive, and the criteria and conditions for the investment firms to provide that type of advice.

Considering the objectives of simplification and avoidance of unnecessary burden, ESMA is requested to assess in its advice whether Sections 2 and 3 of Commission Delegated Regulation (EU) 2017/565 should be further amended to align their content to Article 25 of of MiFID II, as amended by the Omnibus Directive. Regarding the clients' sustainability preference, ESMA is invited to consider the outcome of the future political agreement on the reform of the regulation on the sustainability-related disclosures in the financial services sector (SFDR)[6]

With the same objectives in mind, ESMA is also requested to consider whether the current rules on the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided set out in Commission Delegated Regulation (EU) 2017/565 need to be simplified, ensuring that the information provided to retail clients is easily comprehensible by the target audience.

In conducting its work, ESMA should consider:

(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments;

(c) the retail or professional nature of the client or potential clients or, where appropriate, their classification as eligible counterparties.

ESMA should take into account all relevant provisions of MiFID II, as amended by the Omnibus Directive and all relevant recitals of the Omnibus Directive and all relevant provisions of Commission Delegated Regulation (EU) 2017/565.

e) Marketing communication

The revised rules on marketing communication and practices relating to financial instruments and investment services introduce new requirements addressing in particular risks posed by the use of digital channels, influencers and practices involving behavioral bias.

Those rules require that marketing communications are fair, clear and not misleading, and include, in a clear format, the essential characteristics of the financial instruments and investment services presented to the clients or potential clients together with a balanced presentation of risks and benefits tailored to the intended target audience. Investment firms must ensure marketing enables easy identification of the investment firm.

Those rules also reinforce the responsibility of investment firms when using services provided by third parties, such as distributors, social media, finfluencers (financial influencers), etc. for their marketing communication. To mitigate risks from the use of services provided by those third parties, investment firms must conclude written agreements with those third parties, defining the nature and scope of their promotional activities. Additionally, investment firms must implement internal policies, controls and reporting procedures to monitor compliance, while maintaining records of all marketing communications (including third-party promotions) for at least five years, or up to seven years if requested by competent

[6] Regulation - 2019/2088 - EN - sfdr - EUR-Lex

authorities. These measures aim to enhance transparency, prevent misleading practices, and ensure robust enforcement in a fast-evolving digital marketing environment.

In accordance with Article 24c(8) of MiFID II, as amended by the Omnibus Directive, ESMA is invited to provide advice specifying:

(a) the essential characteristics of financial instruments or investment and ancillary services to be disclosed in all marketing communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by a retail client, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of benefits and risks and appropriate in terms of content and distribution channels for the target market.

ESMA should take into account all relevant provisions of MiFID II as amended by the Omnibus Directive, all relevant recitals, in particular recitals 30 to 32a of the Omnibus Directive and all relevant provisions of Commission Delegated Regulation (EU) 2017/565. ESMA should also consider that the information provided to retail clients is easily comprehensible by the target audience and, where relevant and feasible, perform consumer testing.

In light of the introduction by the Omnibus Directive of new requirements under the MiFID II framework as described in this section under subsections a),b),c),d), and e), ESMA is also invited to provide advice more generally on the necessary amendments, updates and where necessary, repeals of relevant provisions of Commission Delegated Regulation 2017/565.

f) Undue costs: rule of conducts of UCITS management companies and AIFMs

EU rules require AIFM and UCITS management companies to act in the best interests of funds and investors, including making sure that investors are not charged with undue costs. To this end, UCITS management companies and AIFMs should have a robust process to identify, assess and regularly review all costs charged to funds or investors, check that those costs are legitimate, necessary and consistent with the investment fund’s pre-contractual documents; and ensure costs are allocated fairly, except for cases mentioned in Article 12 (1) of AIFMD where AIF rules or instruments of incorporation provide for a preferential treatment.

If undue costs are charged, management companies should try to identify the affected investors and reimburse them. If that is not possible, or if reimbursement would cost more than the amount to be returned, the money must be paid back to the UCITS or the AIF.

ESMA is invited to provide technical advice on the aspects referred to in Article 14(2)(d) of UCITSD and Article 12(3)(a) of AIFMD with a view to specifying the minimum requirements of the undue costs process designed to prevent undue costs from being charged to UCITS, AIFs and their unit-holders or shareholders, or otherwise compensate them. Those criteria should in particular:

a) ensure that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a) of Article 14 of UCITSD and Article 12 of AIFMD;

b) identify which costs can be charged to the UCITS, AIFs and/or their unit-holders or shareholders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) of Article 14 of UCITSD and Article 12 of AIFMD, and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c) of Article 14 of UCITSD and Article 12 of AIFMD;

c) identify potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

d) establish a procedure to determine the level of compensation where undue costs have been charged to investors

4. Advice for a Commission delegated directive under MIFID II, Commission delegated directive under UCITSD and a Commission delegated regulation under AIFMD

All elements presented in this section should be part of a single Commission delegated Act for each sectoral legislation, i.e. for MIFID II (a Commission delegated directive), for UCITSD (a Commission delegated directive) and for AIFMD (a Commission delegated regulation). ESMA is invited to consider holistically whether any changes introduced by the Omnibus Directive in level 1 would require any adaptation of the relevant level 2, in particular across the following areas:

a) Value for money

In light of the introduction by the Omnibus Directive of a new requirement on a "value for money" assessment for certain financial instruments under the MiFID II product governance rules, ESMA is invited to provide advice on the necessary amendments, updates and where necessary, repeals, to Articles 9, 10 and any other relevant provision of Commission Delegated Directive 2017/593.

With regard to UCITSD and AIFMD, ESMA is invited to provide advice on new requirements, to be added to Commission Directive 2010/43/EU and Commission Regulation 231/2013.

b) Inducements

In light of the amendments to the inducement provisions of MiFID II, ESMA is invited to provide advice on the necessary amendments, updates and where necessary, repeals, of Articles 11, 12 and any other relevant provision of Commission Delegated Directive 2017/593.

c) Best interest

In light of the changes to the level 1 in the area of acting in the best interest of the client under MiFID II, as amended by the Omnibus Directive, ESMA is invited to provide advice on the necessary amendments, updates and where necessary, repeals, to the relevant articles on the best interest of the client in Commission Delegated Directive 2017/593, also specifically considering the simplification objectives.

Any advice relating to points b) and c) in this section should also take into account, where necessary, amendments to Commission Delegated Regulation (EU) 2017/565, as specified in Section 3 of this letter.

d) Undue costs

Following the introduction, by the Omnibus Directive, of a new requirement relating to the assessment of undue costs under the UCITS and AIFMD rules of conduct, ESMA is invited to advise on the amendments and necessary updates to Article 22 of Commission Directive 2010/43/EU and to Article 17 of Commission Regulation 231/2013, and to propose any new provisions or other amendments to those delegated acts that may be required to ensure the effective implementation of that requirement.

5. Final considerations

The Commission reserves the right to revise and/or supplement this mandate.

It is recalled that the analysis provided by ESMA will not prejudge the Commission's final decision concerning the content of delegated acts. Moreover, in accordance with the established practices of the Commission Expert Group on Securities Markets, the Commission will continue, where appropriate, to consult the experts appointed by Member States in the preparation of the proposal.

Annex

Estimated timeline for the provision of ESMA technical advice on MiFID II level 2 measures in the context of the Retail Investment Strategy

This estimated timeline assumes publication in the Official Journal at the latest in January 2027.

It takes into account time for ESMA's work, as well as time for the Commission to adopt the delegated acts, for the co-legislators to scrutinise them, for Member States to transpose them in national law (where relevant) and for firms to implement the new measures

	ESMA technical advice on:	Date of delivery (if RIS is adopted at the latest in January 2027 – most measures are due to become applicable within 30 months ie by mid- 2029)	comments
	Product governance for MIFID investment firms under MiFID II and rules of conduct for UCITS management companies and AIFMs– Value for money		
1	**Delegated Act to specify the product governance requirements referred to in paragraphs 1, 2, 2a and 3 of Article 16-a of MIFID II** (a) criteria to select eligible financial instruments for the composition of peer groups (b) criteria to determine whether the financial instrument offers value for money to retail clients where there are no or very limited comparable financial instruments available, (c) criteria to specify how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the relevant peer group, (d) criteria to determine whether the value for money of a financial instrument is at a significant distance from the average costs and performance of the financial instruments in the relevant peer group to the detriment of a retail client, also with a view	01 October 2027	The work on this DA should take into account the work on the RTS and ITS on cost disclosure

	to determining whether the costs are proportionate and justified		
2	**Delegated Act** specified under Article 14(2)(e) of UCITSD: (e) specify the value for money requirements referred to in this Article, including: (i) the criteria to select eligible UCITS for the composition of peer groups to ensure a representative number of UCITS in those peer groups in the Member State or Member States where the relevant UCITS will be marketed, and, where feasible and proportional, in other Member States where comparable UCITS are marketed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable UCITS, and taking into account the market size; (ii) the criteria to determine whether the UCITS offers value for money to retail investors where there are no or very limited comparable UCITS available, and therefore no relevant peer group can be identified; (iii) the criteria to specify how the costs, charges and performance of the UCITS compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of a UCITS is at a significant distance from the average costs and performance of the UCITS in the relevant peer group to the detriment of retail investors, also with a view to determining whether the costs are and justified.;	01 October 2027	
3	**Delegated Act** specified under Article 12(3) (b) of AIFMD aimed at AIFs that qualify as packaged retail investment products: (b) specify the value for money requirements referred to in this Article, including: (i) the criteria to select eligible AIFs for the composition of peer groups to ensure a representative number of AIFs in those peer groups in the Member State or Member States where the	01 October 2027	

	relevant AIFs will be marketed, and, where feasible and proportional, in other Member States where comparable AIFs are marketed, taking into account that this should not require a union wide comparison, but a limited comparison with comparable AIFs, and taking into account the market size; (ii) the criteria to determine whether the AIF offers value for money to retail investors where there are no or very limited comparable AIFs available, and therefore no relevant peer group can be identified; (iii) the criteria to specify how the costs, charges and performance of the AIF compare to the costs, charges and performance of the relevant peer group, including the determination of whether the value for money of an AIF is at a significant distance from the average costs and performance of the AIFs in the relevant peer group to the detriment of retail investors, also with a view to determining whether the costs are proportionate and justified.;		
	Inducements		
4	**Delegated Act to specify where necessary** (Article 24a(8b) of MiFID II as amended by the Omnibus Directive)**:** (a) **the criteria for assessing compliance of firms receiving inducements** with the obligation to act honestly, fairly and professionally in accordance with the best interest of the client, in respect of investment advice on an independent basis or portfolio management services, investment research, underwriting and placing of financial instruments; (b) **the criteria for assessing whether the inducement provides tangible benefit to the client**; (c) **the criteria for assessing whether the inducement is proportionate** to the value of the financial instrument and the level of service provided to the client.	01 October 2027	

	Suitability and appropriateness assessment		
5	**Delegated Act to ensure that investment firms comply with the principles set out in paragraphs 1 to 6 of Article 25** when providing investment or ancillary services to their clients (Article 25(8) of MiFID II as amended by the Omnibus Directive). Specify: (a) the **information to obtain when assessing the suitability or appropriateness** of the services and financial instruments for their clients, (b) **the criteria to assess non-complex financial instruments** (for the appropriateness assessment)	01 October 2027	
	Simple advice		
6	**Delegated Act** on the criteria and conditions and the financial instruments that qualify as **well-diversified, non-complex and cost-efficient** for the purpose of the provision of investment advice (Article 25(8) of MiFID II as amended by the Omnibus Directive).	01 October 2027	
	Recording and agreements		
7	**Delegated Act on the content and the format of records** and agreements for the provision of services to clients (Article 25(8) of MiFID II as amended by the Omnibus Directive).	01 October 2027	ESMA to assess if amendments are needed
	Marketing communication		
8	**Delegated Act to specify (Article 24c(8), points (a) and (b) of MiFID II** as amended by the Omnibus Directive) (a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) **to be disclosed in all marketing communications** targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by retail client, regardless of the means of communication;	01 October 2027	

	(b) **the conditions with which marketing communications and marketing practices should comply** in order to be fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target market.		
9	Advice on any **necessary amendments to** Commission Delegated Regulation 2017/565 and Delegated Directive 2017/593 **to align with the Omnibus Directive (Sections 3 and 4)**	01 October 2027	
	Undue costs		
10	**Delegated Act** specified under Article 14(2)(d) of UCITSD: (d)specify the minimum requirements for the undue costs process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by: (i)ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a); (ii)identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c); (iii)identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest; (iv)establishing a procedure to determine the level of compensation where undue costs have been charged to investors.;	01 October 2027	

11	**Delegated Act** specified under Article 12(3)(a) of AIFMD: (d) specify the minimum requirements for the undue costs process to prevent undue costs from being charged to the AIF and its unit-holders or shareholders, in particular, by: (i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a); (ii) identifying which costs can be charged to the AIF and its unit-holders or shareholders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c); (iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest; (iv) establishing a procedure to determine the level of compensation in case undue costs have been charged to investors.	01 October 2027	