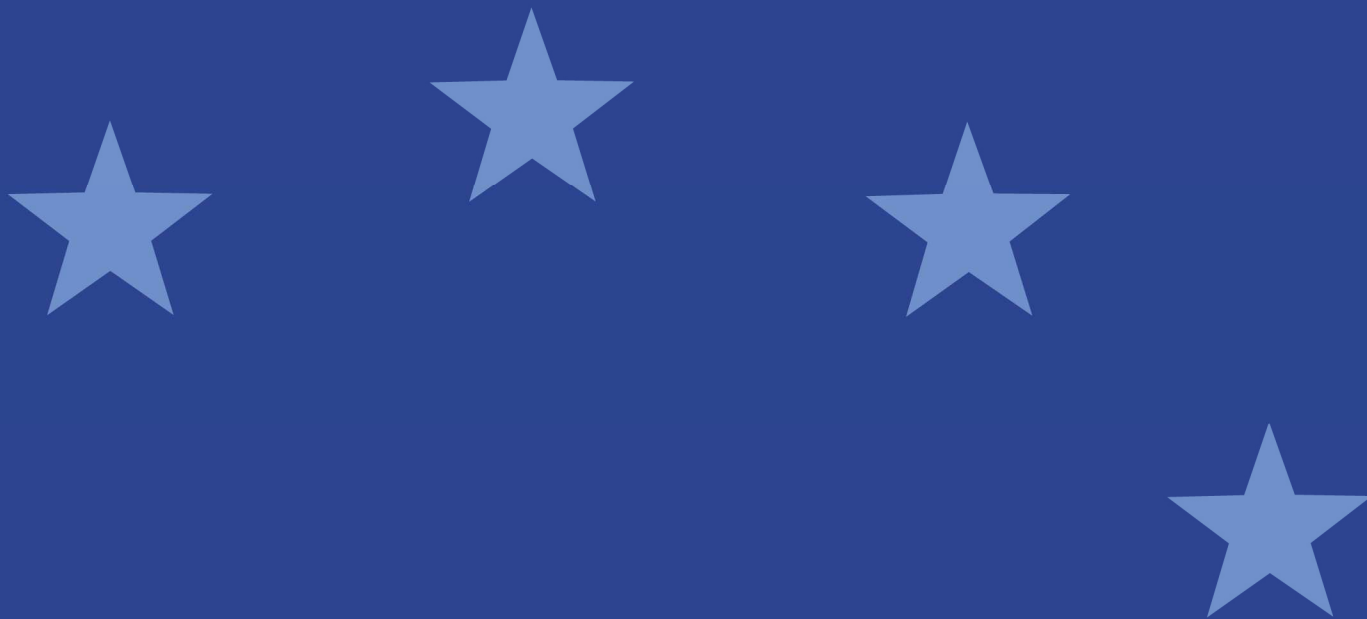




European Securities and
Markets Authority

**Reply form for the
Consultation paper
Guidelines on the application of C6 and C7 of Annex I of MiFID**





European Securities and
Markets Authority

Date: 30 September 2014

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation paper - Guidelines on the application of C6 and C7 of Annex I of MiFID, published on the ESMA website ([here](#)).

Instructions

Please note that, in order to facilitate the analysis of the number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type < ESMA_ MIFID_ C6_ C7_ QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **05 January 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading ‘Disclaimer’.

Q1: Do you agree with ESMA's approach on specifying that C6 includes commodity derivative contracts that "must" be physically settled and contracts that "can" be physically settled?

<ESMA_MIFID_C6_C7_QUESTION_1>

Amundi welcomes the proposed interpretation and considers that it will bring clarity on the definition of commodity derivatives that are financial instruments. The intention in C6 is to catch all contracts that have a chance to be physically settled. For those who must be physically settled, chances are 100%.

<ESMA_MIFID_C6_C7_QUESTION_1>

Q2: Do you consider there are any alternatives for or additions to the proposed examples of "physically settled" that ESMA should consider within the definition of C6? If you do, what are these?

<ESMA_MIFID_C6_C7_QUESTION_2>

No, Amundi agrees that if physical settlement implies a transfer of property of the underlying commodity it may be extended to any process that gives the same rights, not only economic but of an ownership nature. Please note that Amundi does not usually trade derivatives that are not settled in cash as UCITS directive and French regulation prohibit the physical delivery of assets which are not eligible in a fund. Professional specialized funds are the only French AIFs that can accept physical delivery.

<ESMA_MIFID_C6_C7_QUESTION_2>

Q3: Do you agree with ESMA's discussion of the relationship between definitions C5, C6 and C7 and that there is no conflict between these definitions? If you do not, please provide reasons to support your response. In particular, ESMA is interested in views regarding whether the proposed boundaries would result in "gaps", into which some instruments would fall and not be covered by any of the definitions of financial instrument. ESMA also seeks views on whether there are any adverse consequences from the fact that some instruments could fall into different definitions depending upon the inherent characteristics of the contract e.g. those with "take or pay" clauses that may be either cash or physically settled.

<ESMA_MIFID_C6_C7_QUESTION_3>

Amundi agrees that the regulation as expressed in this Annex1 of MiFID is very confusing and opens way to different interpretations. Aware of the consequences of being identified as a financial instrument, Amundi believes that it is of utmost importance to favour an harmonisation in this field and welcomes ESMA's initiative to propose a common view on commodity derivatives. It hopes that the future text in MIF 2 legislation will be consistent with the current efforts made under MIF1.

Amundi supports the interpretation proposed by ESMA and considers it to make sense without being in conflict with higher level text. We consider that a decision tree is now available running after the following lines:

- Is the derivative settled in cash mandatorily? Yes, it is a Financial instrument (FI)
- If not, is there a possibility to have a cash settlement at the option of one of the counterparties ? Yes, it is a FI
- If not, it is a derivative that can or must be settled physically; is it listed on a RM or MTF ? Yes, it is a FI
- If not, it is an OTC derivative; is it a spot contract? Yes , it is **not** a FI
- If not, is it traded for commercial purpose as defined in article 38.4 for energy actors? Yes, it is **not** a FI for the specific commercial counterparty
- If not there is a last test of quasi-listed derivative which includes 3 cumulative criteria : clearing or margin arrangements? Standardization in terms of dates, price, lot...? Is it traded on a 3d country venue similar to RM or MTF, or going to be traded on RM MTF or 3d country equivalent, or equivalent to a contract traded on one of these venues? If 3 yes, it is a financial instrument ,
- If not it is **not** a financial instrument.

Amundi strongly encourages ESMA to publish this decision tree incorporating references to C5 (first item) C6 (the following 2 items) and then C7 specifications. It would be of great help for stakeholders that gen-

erally consider that the categories as defined in these C5 to C7 clauses are not adequate and do not give a proper representation of real contracts that one may trade.

<ESMA_MIFID_C6_C7_QUESTION_3>

Q4: What further comments do you have on ESMA's proposed guidance on the application of C6?

<ESMA_MIFID_C6_C7_QUESTION_4>

Amundi is concerned that MIF2 introduce some confusion, with the creation of OTFs for example. It expects ESMA to be very attentive not to jeopardize the current harmonisation process at the occasion of the implementation of MIF2.

<ESMA_MIFID_C6_C7_QUESTION_4>

Q5: Do you have any comments on ESMA's proposed guidance on the specification of C7?

<ESMA_MIFID_C6_C7_QUESTION_5>

TYPE YOUR TEXT HERE

<ESMA_MIFID_C6_C7_QUESTION_5>