

ESMA

103 Rue de Grenelle

75007 Paris

France

23rd February 2012

Dear Sir/Madam,

ESMA Consultation Paper – Guidelines on certain aspects of the MiFID compliance function requirements (ESMA/2011/446)

The British Standards Institution is pleased to respond to this ESMA Consultation Paper. Please treat this submission as a general response although in the wider context of standards as a risk-based solution it might have particular relevance to Questions 1 and 12.

We would like to draw attention to a relevant British Standard published in February 2011: **BS 8453:2011 - Compliance Framework for Regulated Financial Services Firms.**

BS 8453 is a voluntary standard developed independently through full consensus with industry and other key stakeholders in the UK. It uses an approach that has been loosely mirrored in the ESMA Guidelines for Investment Firms outlined in Annex III. It has been well received by financial services firms operating within the UK and its publication was welcomed by the UK Regulator, the Financial Services Authority.

Crucially this initiative was a proactive response by industry to calls for standards in the areas of compliance management following a survey of UK practitioners. BS 8453 was developed through a consensual process including public consultation by a BSI Committee, SVS/6/2, which included representatives from UK trade associations, professional bodies, senior compliance practitioners and consultants.

The standard is designed to provide a framework and guidance to support the effective management of the compliance function within a regulated (investment, wholesale or retail) firm through its approach and by embedding relevant policies and procedures. It sets out a series of requirements covering effective compliance management in areas including risk assessment, monitoring, regulatory reporting, advice and training; with practical guidelines where appropriate. A similar approach has also been used in the ESMA Draft Guidelines (as outlined in Annex III).

The standard contains a scope, series of definitions relevant to the compliance function and guiding principles to help forge a 'compliance culture' within organisations, including the emphasis on senior management responsibility, transparency, independence and adequacy of resources. Members of the BSI Committee SVS/6/2 are of the view that BS8453 offers a more rigorous and helpful way of monitoring and reviewing the compliance function than the ESMA draft guidelines.

One of the key features of BS 8453 is that it has been designed to be applicable to any type of regulated firm, regardless of size, nature or type of business and this has been reflected by the range of users of the standard so far. Whilst the standard was developed to be applicable in the UK its content is portable and therefore has the potential to be equally relevant to firms operating in other regulated jurisdictions. BSI is aware of firms and organisations in other European states that have expressed an interest in the document; indeed several such firms attended the standard's launch.

BSI is a member of CEN, the European Committee for Standardization, and as such is part of the European standardization system that facilitates and promotes European standards to be applied uniformly across the EEA. Many of these standards are developed at the request of the European Commission, through its issuing of 'mandates' (standardization requests), as permitted by Directive 98/34/EC.

Given the growing awareness of BS 8453 in Europe and the expertise in standards development, stakeholder consultation and consensus building that CEN has at its disposal, we would urge ESMA to consider the possibility of using this BSI standard as a basis for European standardization work. Such a European standard could meet ESMA's needs for a guidance document. Furthermore, it would do this by means of an independent platform, whose role is to bring together all interested parties and the legitimacy of which has been recognized by the European institutions. We would be happy to facilitate any necessary discussions.

More information on BS 8453:2011 can be found here: <http://shop.bsigroup.com/BS8453>.

Background on BSI

BSI is the UK's National Standards Body, incorporated by Royal Charter and responsible independently for preparing British Standards and related publications. BSI has 111 years of experience in serving the interest of a wide range of stakeholders including government, business and society.

BSI presents the UK view on standards in Europe (to CEN and CENELEC) and internationally (to ISO and IEC). BSI has a globally recognized reputation for independence, integrity and innovation ensuring standards are useful, relevant and authoritative.

A BSI (as well as CEN/CENELEC, ISO/IEC) standard is a document defining best practice, established by consensus. Each standard is kept current through a process of maintenance and reviewed whereby it is updated, revised or withdrawn as necessary.

Standards are designed to set out clear and unambiguous provisions and objectives. Although standards are voluntary and separate from legal and regulatory systems, they can be used to support or complement legislation.

Standards are developed when there is a defined market need through consultation with stakeholders and a rigorous development process. National committee members represent their communities in order to develop standards and related documents by consensus. They include representatives from a range of bodies, including government, business, consumers, academic institutions, social interests, regulators and trade unions.

Yours faithfully,



Richard Collin
National and European Policy Manager
External Policy
The British Standards Institution
+44 (0)20 8996 7502
richard.collin@bsigroup.com