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|  5 October 2016 I ESMA/2016/1437 |

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| Reply form for the Consultation Paper on the Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers |
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| Date: 5 October 2016ESMA/2016/1437 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers, published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large 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, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_ QUESTION\_MIFID\_MBG\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* 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:

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

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_MiFID\_GMB\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_MiFID\_GMB\_ESMA\_REPLYFORM or

ESMA\_MiFID\_GMB\_ESMA\_ANNEX1

***Deadline***

Responses must reach us by **5 January 2017.**

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://www.esma.europa.eu) under the heading ‘Legal notice’.

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_MIFID\_MBG\_0>

TYPE YOUR TEXT HERE

< ESMA\_COMMENT\_MIFID\_MBG\_0>

1. Do you agree with ESMA’s view regarding sufficient time commitment?

<ESMA\_QUESTION\_MBG\_1>

Euronext supports the objective to have a written policy describing the scope of the job of the management body of a market operators/DRSPs and the anticipated time commitment required for each position. However in our opinion, it will be difficult to assess the anticipated time commitment in advance because it is not limited to the time that is spent on meetings only. It seems to us that the attendance to the management body’s meetings can only be one of the indicators. Other possible indicators that could be considered are questions raised or comments made outside meetings, attendance to training sessions, the induction program set up by the market operators/DRSPs, and the time spent on managing or supervising the company in general.

<ESMA\_QUESTION\_MBG\_1>

1. Do you agree with ESMA’s view regarding the calculation of directorships?

<ESMA\_QUESTION\_MBG\_2>

Euronext doesn’t’ t have any specific comment on the calculation of directorships.

<ESMA\_QUESTION\_MBG\_2>

1. Is there any other element in the calculation of the number directorships that should be clarified?

<ESMA\_QUESTION\_MBG\_3>

Yes, it should be explicitly clarified whether directorships held in countries outside the European Union should be taken into account in the calculation.

<ESMA\_QUESTION\_MBG\_3>

1. Do you agree with ESMA’s view regarding the adequate knowledge, skills and experience at collective and individual levels?

<ESMA\_QUESTION\_MBG\_4>

Yes, Euronext agrees with ESMA’s view.

<ESMA\_QUESTION\_MBG\_4>

1. Do you agree with ESMA’s view regarding honesty and integrity?

<ESMA\_QUESTION\_MBG\_5>

Yes, Euronext agrees with ESMA’s view

<ESMA\_QUESTION\_MBG\_5>

1. Is there any other parameter that should be considered in these guidelines with respect to the honesty and integrity required to the members of the management body of market operators/DRSPs?

<ESMA\_QUESTION\_MBG\_6>

 No other parameters should be considered.

<ESMA\_QUESTION\_MBG\_6>

1. Should market operators/DRSPs check the accuracy of the data provided by a member/prospective member of the management body? If yes, how should this be done?

<ESMA\_QUESTION\_MBG\_7>

The market operator should be in the position to rely on the statements made by the member / prospective member of the management body, also in the light of the background checks done by the regulators. The regulator is far better positioned to check the accuracy of the data provided by the prospective member of the management body at the time of the assessment in the context of the approval for the appointment of the member.

We may want to get representations from the member / prospective member of the management body as regards the accuracy of data and information provided, plus a commitment to inform as soon as reasonably practicable the market operator/DRPS of any change in the information provided.

<ESMA\_QUESTION\_MBG\_7>

1. Do you agree with ESMA’s view regarding the independence of mind of a member of a management body?

<ESMA\_QUESTION\_MBG\_8>Euronext agrees with ESMA’s position. That being said, we would also recommend to provide the members of a management body with some information on the definition of a conflict of interest and the situation where a member of a management body could be in a situation of conflict of interest. Some guidance should be provided by ESMA as regards the conflict of interest.

<ESMA\_QUESTION\_MBG\_8>

1. In particular, do you agree with requiring a member or prospective member to identify whether it is or has been a shareholder whose participation reached or exceeded 5% of voting rights of a market operator/DRSP or an officer of, or otherwise associated directly with, a shareholder whose participation reaches or exceeds 5% of voting rights of a market operator/DRSP?

<ESMA\_QUESTION\_MBG\_9>

Yes Euronext agrees

<ESMA\_QUESTION\_MBG\_9>

1. Do you agree with ESMA’s view about induction and training of members of the management body of market operators?

<ESMA\_QUESTION\_MBG\_10>

Indeed we also think that market operators/DRSP should establish a policy for the induction of members of the management body and organise some sort of training sessions on a yearly basis (i.e. meeting with business representatives, risk and compliance department, internal audit representatives etc..) to get an up to date view on ongoing matters. Developments regarding applicable governance codes and legislation should also be included in the information given in the yearly updates.

<ESMA\_QUESTION\_MBG\_10>

1. Do you agree with ESMA’s view regarding diversity?

<ESMA\_QUESTION\_MBG\_11>

Euronext generally view diversity as a positive way to stimulate debates at the board meetings. We therefore agree with ESMA’s view.

<ESMA\_QUESTION\_MBG\_11>

1. Do you agree with ESMA’s view regarding record-keeping?

<ESMA\_QUESTION\_MBG\_12>

Euronext does not disagree on the principle, but we do want confirmation that by meeting these requirements we will be compliant with the European Union’s regulation on privacy and relevant national laws.

<ESMA\_QUESTION\_MBG\_12>

1. Is there any additional element that should be considered for the purpose of these guidelines that has not been mentioned before?

<ESMA\_QUESTION\_MBG\_13>

Euronext suggests that ESMA takes the following into consideration:

* Considerations differ based on the nature of the governance structure: unitary or two tier. This might be handled better than in the present draft by distinguishing between the requirements for 'executives' and 'non-executives' collectively when considering time commitments, competencies and conflicts. Although a distinction between executive and non-executive directors is acknowledged in sections 3.3 and 3.4 (for the calculation of number of directorships) it is not reflected generally in the paper. Instead the reference throughout is to the members of the management body whether carrying out management or supervisory functions. However, the distinction is drawn at the end of the template for a matrix to assess the collective competence of members of the management body.
* A distinction could be made for governance requirements for larger market operators and for smaller market operators, who could possibly be subject to less stringent requirements. Proportionality may be appropriate notwithstanding the market operator being part of a larger group.
* In this context, a group context may be relevant when considering the strengths (and weaknesses) of the governance structure generally and not just as an item when assessing areas of knowledge and fields of experience or when calculating the number of directorships.

<ESMA\_QUESTION\_MBG\_13>

1. Please provide any views with respect to the costs and benefits identified in the relevant annex.

<ESMA\_QUESTION\_MBG\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MBG\_14>