

9 September 2013

Submitted via ESMA Website

Dear Sir

**Consultation on Draft Regulatory Technical Standards
on information requirements for assessment of acquisitions and increases in holdings
in investment firms (MiFID)**

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around €5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. The IMA's authoritative Asset Management Survey 2012 recorded that IMA member firms were managing 38% of the domestic equity market for clients.

In addition to answering the questions asked in the paper, set out in Appendix I, I have identified the following key issues, with which we have particular concerns:

- The existing 3L3 guidelines recognise that proportionality should be applied to the information required about the professional competence of the acquirer where a purchase is made for investment purposes, as opposed to trying to control the target as a subsidiary. This approach is not carried over to the draft RTS. While it does (at Art 5(1)(b)) require the acquirer to provide details of their 'intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment', it does not recognise that where the intentions are purely for investment purposes that less detailed information should be required as regards professional competence, or other issues.
- The second issue is the proposal to reduce the information requirements for EU regulated entities acquiring small non-complex investment firms (Art.11). Some of this information would seem to be of considerable use to the NCA of the acquired firm. While much of the information would be held by the NCA of the acquirer there seems to be no requirement on them to provide the information to the acquiree's NCA.

While we recognise that, technically, ESMA is not required to consult on the ITS setting out the consultation process between competent authorities, we would expect that ESMA follows a clear and transparent process when drafting this ITS, as with all of its legislative drafting responsibilities. It is in everyone's interest that all parties are able to input to the drafting process, to obtain the best possible output from the

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process. We would hope that ESMA see the consultation process, not as an onerous burden imposed on them by statute, but as an essential part of the process of developing good legislation.

Article 11(1)(b)(ii) refers to points (d) to (m) of paragraph 2 of Article 4, but Article 4(2) only goes up to (k).

I would be happy to discuss the implications of the issues I have raised, whenever is convenient.

Yours sincerely

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Proportionality

Q2: Should the concept of proportionality be considered more broadly, such as in terms of the nature, scale and complexity of the target entity and the envisaged plans of the proposed acquirer where the proposed acquirer is an EU-regulated entity? Do you agree with the suggested information requirements set out in Article 11 of the draft RTS?

Yes. The existing 3L3 guidelines recognises that proportionality should be applied to the information required about the professional competence of the acquirer where a purchase is made for *investment purposes*, as opposed to trying to *control* the target as a subsidiary. This approach is not carried over to the draft RTS. While the draft RTS does (at Art 5(1)(b)) require the acquirer to provide details of their 'intentions with respect to the proposed acquisition, such as strategic investment or portfolio investment', it does not recognise that where the intentions are purely for investment purposes that less detailed information should be required as regards professional competence, or other issues.

We would suggest that the difference between investing in and trying to control a company is recognised in the RTS and should be key to the proportional application of the requirements.