

**Responses on consultation paper**  
**(guidelines on certain aspects of the MiFID compliance function requirements)**

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**General observations:**

First of all, we consider the present Consultation paper a quite advanced guide that really worth to follow. We do believe that strengthening of the compliance function fundamentally contributes to the fulfillment of regulatory requirements. However, we miss the following issues:

1) Not only investment firms but also financial institutions providing investment services shall be in compliance with MiFID. With regard to the organizational requirements, MiFID does not prescribe harmonization, however the same rules shall prevail in connection with operation of compliance and other control functions. Regarding this, we would urge that regulation of compliance function shall be normative not only for investment firms but for other financial institutions also. We can not support forming separate MiFID and banking compliance in the case of financial institutions.

Obviously ESMA has scope of authority concerning the regulating of securities market, but in our opinion this authority rule can not obstruct regulating same or similar functions (which are closely linked to each other) according to different principles, requirements. We think that extension of issues described in this Consultation paper to other financial institutions (banks, asset managers, insurance companies) is reasonable.

2) Beside the above mentioned, we consider very important that control functions cannot be regulated as isolated functions. The isolated criteria systems (which are sometimes not consistent enough with each other) can construct the prosperous cooperation. (Basel recommendations still regulate separately these functions, partly this is the reason why risk management, compliance and internal audit are regulated in a duplex or imperfect way, with overlappings and with using different terminology for the same activities.)

To be in compliance with MiFID requirements, not only compliance function, but primarily internal audit and secondly risk management have also serious significance. With unified regulation it can be avoided that some tasks are not allocated, and other tasks belong to more functions in the same way. We find unified approach crucial in the following issues:

- monitoring: it shall be clearly defined, which is compliance and which is internal audit task. If scope of authority and responsibility are clearly described, the danger of duplication can be minimized. Role in monitoring activity (regarding that MiFID states requirements for both functions) cannot be the subject of free agreement between these functions. Their role is different and independent from each other within the organization, so they can not undertake each others' tasks in the frame of coordination, moreover, it could cause serious conflict of interest.

-risk assessment: Mainly banks have significant and extensive operational risk assessment process with developed methodology. Present Consultation paper does not mention, not even with a reference to the question of which kind of cooperation shall be ensured between the functions. The separate regulative requirements result in carrying out assessment of the same risks with different terms and methodology, but for the same goal again and again. In our opinion, parallel regulations in some cases duplicate needlessly the risk measurement tasks.

Ensuring compliance with MiFID requirements is the task of the investment firm, but MiFID and also ESMA state requirements regarding each function, so it is not free business decision how the investment firm reaches the goals. So in our opinion the requirements shall be described with extension to all regulated control functions.

At the same time, we consider the mention of cooperation with legal unit as a significant improvement, which was unduly neglected till this time. However, with regard to the fact that MiFID considers compliance with legal requirements fully as the part of compliance function, legal unit can only take part in this process as contributor and not as individual responsible.

Beside the above mentioned, we obviously consider the cooperation of functions (regardless of being control functions, business units, banking or investment activities) fundamentally important. Defining the responsibilities and scope of authorities in the same way to all services and business processes may contribute to this prosperous cooperation.

### **III.I. Compliance risk assessment**

**While ensuring the comprehensive scope of the compliance function, investment firms should ensure that the function takes a risk-based approach in order to allocate the function's resources efficiently. Risk assessment should be used to determine the focus of the monitoring and advisory activities of the compliance function. The assessment should be performed regularly to ensure that the focus and the scope of compliance monitoring and advisory activities remain valid.**

10. MiFID requires investment firms to establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the investment firm to comply with its obligations under MiFID. As part of this, the compliance function should identify the level of compliance risk the investment firm faces, taking into account the investment services, activities and ancillary services provided by the investment firm, as well as the scope of financial instruments traded and distributed.

11. The compliance function's objectives and work program should be developed and set up on the basis of this assessment. The identified risks should be reviewed on a regular basis to ensure that any emerging risks (for example, resulting from new business fields or other changes in the investment firm's structure) are taken into consideration.

**Q1: Do you agree that investment firms should ensure that, where the compliance function takes a risk-based approach, any comprehensive risk assessment is performed to determine the focus and the scope of the monitoring, reporting and advisory activities of the compliance function? Please, also state the reasons for your answers.**

Actually we agree that the risk assessment is the basis of the activity. It prevails not always in the practice. Unlike the operational risks there is no standard risk measurement, the depth, the frequency and the sophistication differ significantly by institutions. In general, with the development of the method of the risk assessment, the risk assessment basis of these functions can be enhanced,

In connection with the risk assessment based monitoring the immediate change of the (especially IT based) activities could cause difficulties on the basis of the changes of the risk values. But this approach is acceptable in the case of monitoring and also training activities. In most cases the guidance is based on requests, the results of the risk assessment do not effect in itself.

Basically we agree the activity based on risk assessment, but it does not become automatically either now or in the future.

### **III.II. Monitoring obligations of the compliance function**

**Investment firms should ensure that the compliance function establishes a monitoring program that covers all relevant areas of the investment firm's investment services, activities and ancillary services in order to ensure that compliance risk is comprehensively monitored.**

12. The aim of a monitoring program should be to evaluate whether the investment firm's business is conducted in compliance with its obligations under MiFID and whether the internal guidelines, organisation and control measures the investment firm has put in place remain effective and appropriate.

13. Where an investment firm is part of a group (national or international), responsibility for the compliance function rests with each investment firm in that group. While the compliance function within each investment firm should take the group of which it is a part into account - for example, by working closely with audit, legal, regulatory and compliance staff in other parts of the group - it should nevertheless ensure that the investment firm (as distinct from the group) remains responsible for monitoring its own compliance risk.

14. The risk-based approach to compliance should form the basis for determining the appropriate tools and methodologies, as well as the extent of the monitoring program and the frequency of monitoring activities (which may be recurring, ad-hoc and/or continuous). The compliance function should also ensure that its monitoring activities are not only desk-based, but that it also verifies - for example, through on-site inspections at the operative business units - how policies and procedures are implemented in practice. The compliance function should also consider the scope of reviews to be performed.

15. Suitable tools and methodologies for monitoring activities that could be used by the compliance function (or indeed by other functions) could include (but are not limited to):

(a) the use of aggregated risk measurements (for example, risk indicators) and the checking of calculations;

(b) the use of reports warranting management attention, documenting material deviations between actual occurrences and expectations (an exceptions report) or situations requiring resolution (an issues log);

(c) targeted trade surveillance, observation of procedures, desk reviews and/or interviewing of relevant staff.

16. The monitoring program should also reflect changes to the investment firm's risk profile, which may arise, for example, from significant events such as acquisitions, IT system changes, or re-organisation. It should also extend to the implementation and effectiveness of any remedial measures taken by the investment firm in response to breaches of MiFID.

17. The monitoring activities performed by the compliance function should also take into account the first level controls in the investment firm's business areas (i.e. controls by the operative units, as opposed to second level controls performed by compliance) and reviews by the risk management and internal audit functions. Reviews by the internal audit function should be co-ordinated with the monitoring activities performed by the compliance function.

18. While the compliance function should not have a role in determining the outcome of complaints, it should have a role in overseeing the operation of the complaints process. In this regard, investment firms should grant the compliance function access to customer complaints received by the firm, and the complaints process should ensure that the compliance function can access any complaint.

**Q2: Please provide your comments (with reasons) on any or all aspects of this guideline on the monitoring obligations of the compliance function.**

Monitoring obligation requirements have been defined from a very high point of view, being very general; concerning the control environment, the minimum requirements should be defined (best practices), the responsibilities of internal audit and compliance should be separated. There are some other tools to mention, like transaction monitoring, regular audit of controls embedded in processes through onsite audit; but the main objective is to define the exact depth of monitoring activity. The consultation material doesn't go further than general statements; it doesn't specify if the organization should have a control map that is composed based on all the processes or based on the MiFID regulations; a method of monitoring should be assigned to each control. We would like to call the attention to our opinion saying that the separation of tasks between internal audit, compliance, and risk has to be defined, in order to fulfill legislative expectations; it should not be separated based on organizational coordination. The activity has to be coordinated by exactly defined responsibilities. The extraction of the there-level control environment is necessary: the embedded controls into the business

processes on the first level (IT and management control, etc.), compliance monitoring of effectivity of controls on the second level, and the audit of IA on the processes on the third level.

### **III.III. Reporting obligations of the compliance function**

**Investment firms should ensure that regular written compliance reports are sent to senior management. Investment firms should ensure that the content of those compliance reports contains a description of the implementation and effectiveness of the firm's compliance program. Reports should be prepared at least annually. Where the compliance function makes significant findings, the compliance officer should, in addition, report these promptly to senior management. The supervisory function, if any, should also receive the reports.**

19. The written report to senior management should cover all business units providing investment services, activities and ancillary services. Where the report does not cover all of these activities of the investment firm, the compliance function should clearly state the reasons for it not doing so.

20. The following matters should be addressed in these written reports, where relevant:

(a) implementation of the compliance program and outcome of the review of the policies and procedures as well as the outcome of on-site inspections or desk-based reviews including breaches and deficiencies in the investment firm's organisation and compliance processes that have been discovered and the appropriate remedial measures taken;

(b) relevant changes in regulation as well as the applicable standards and guidelines set out by ESMA and competent authorities on these provisions over the period covered by the report and the measures taken and to be taken to ensure compliance with the changed requirements (where senior management has not previously been made aware of these through other channels);

(c) future relevant regulatory changes which are likely to have a significant impact on the business;

(d) other significant compliance issues that have occurred since the last report; and

(e) major correspondence with competent authorities (where senior management has not previously been made aware of these through other channels).

21. In addition, the compliance function should report to senior management, in a timely manner, on an ad-hoc basis when significant compliance matters such as major breaches of MiFID and the respective national laws have been discovered. The report should also provide suggestions for the necessary re-medial steps.

22. The reports provided to senior management should also be provided to the supervisory function, if any.

23. The compliance function could consider additional reporting lines to a group compliance function where the investment firm is part of a group.

24. Some competent authorities require investment firms to provide them with compliance function reports. This practice provides competent authorities with first-hand insight into an investment firm's compliance activities, as well as any breaches of regulatory provisions. One competent authority also requires senior management to provide it with an annotated version of the report containing explanations of the compliance function's findings.

**Q3: Please provide your comments (with reasons) on any or all aspects of this guideline on reporting obligations of the compliance function.**

In our opinion the compliance functions have to give information about the topics referred to compliance areas. If the aim of the compliance functions is to ensure the compliance with the MiFID rules, then the compliance report will be incomplete without the content of the a), b) and c) points. The effectiveness of the compliance function gets worse, if the company's subtasks are outsourced.

In the point of view of the responsibility it is solicitous if the management gets the information from other channels instead of the compliance function about the questions which belongs to the compliance according to the consultation document too, because the responsibility for the content of the information is pending. We agree that the compliance function leans on the work of other fields. But it would query the principle of the unified compliance, if it meant the transfer of the information obligations. We don't see the reason for that the meaning of the compliance would not contain all areas.

(In extreme case it means that the risk assessment belongs to the risk operation, the monitoring is carried out by the internal audit, the information passes through other channels, the guidance is provided by the law area e

### **III.IV. Advisory obligations of the compliance function**

**Investment firms should ensure that the compliance function fulfils its advisory responsibilities including training for staff, day-to-day assistance for staff and participation in the establishment of new policies and procedures within the investment firm.**

25. It is important that investment firms, apart from any corporate culture, promote and enhance a 'compliance culture' throughout the firm. The purpose of the compliance culture is not only to establish the overall environment in which compliance matters are treated, but also to engage staff with the principle of improving investor protection.

26. The investment firm needs to ensure that its staff are adequately trained. For this, the compliance function should arrange training and/or other support for staff. Where training is performed by other units, the compliance function should support these units in performing any training. Training and/or other support should focus particularly, but not exclusively, on:

(a) the internal policies and procedures of the investment firm and its organisational structure; and

(b) MiFID, the relevant national laws, the applicable standards and guidelines set out by ESMA and competent authorities, and other supervisory and regulatory requirements that may be relevant, as well as any changes to these.

27. Training should be performed on a regular basis, and need-based training should be performed where necessary. Training should be delivered as appropriate – for example, to the investment firm's entire staff as a whole, or to specific business units, or even to a particular individual.

28. Training should be developed on an on-going basis so that it takes into account all relevant changes (for example, new legislation or standards or guidelines set out by ESMA and competent authorities, changes in the investment firm's business model).

29. The compliance function should periodically assess whether staff hold the necessary level of awareness and correctly apply the investment firm's policies and procedures.

30. Compliance staff should also provide assistance to staff from the operative units in their day-to-day business and be available to answer questions arising out of daily business activity.

31. The compliance function should be involved in the development of the relevant policies and procedures within the investment firm in the area of investment services, activities and ancillary services. In this context, the compliance function should be enabled, for example, to provide compliance expertise and advice to business units about strategic decisions or new business models, or at the launch of a new advertising strategy.

32. Furthermore, the compliance function should be involved in all significant modifications of the organisation of the investment firm in the area of investment services, activities and ancillary services. This includes the decision-making process when new business lines or new financial products are being approved. In this context, the compliance function should be given the right to participate in the approval process for all financial instruments to be taken up in the distribution process. Senior management should therefore encourage business units to consult with the compliance function regarding their operations.

33. The compliance function should regularly be involved in all relevant correspondence with competent authorities.

**Q4: Please provide your comments (with reasons) on any or all aspects of this guideline on the advisory obligations of the compliance function.**

The requirements on advisory function can be interpreted on a wide range, a more specific definition would be necessary to make it clear what business processes should compliance be involved in. According to our opinion, in the meanwhile the right of veto has to be granted concerning internal documents, processes, transactions, and business decisions. Expectations posed against compliance function should be more than providing simple advices, furthermore the independency of the function

itself, is granted by the decision making rights. (In our point of view, the right of veto means the escalation of the issue.)

#### **IV.I. Effectiveness of the compliance function**

**Investment firms should ensure that appropriate human and other resources are allocated to the compliance function taking into account the scale and types of investment services, activities and ancillary services undertaken by the investment firm. They should also provide compliance staff with the authority necessary to exercise their duties effectively, as well as access to all information concerning the investment services and activities as well as ancillary services undertaken.**

**Investment firms should also ensure that all compliance staff have the necessary knowledge and experience for the tasks assigned to them. The compliance officer should have sufficiently broad knowledge and experience and a sufficiently high level of expertise so as to be able to assume responsibility for the compliance function as a whole and ensure that it is effective.**

35. The number of staff required for the tasks of the compliance function depends to a large extent on the nature of the investment services, activities and ancillary services and other services provided by the investment firm. Where an investment firm's business unit activities are significantly extended, the investment firm should ensure that the compliance function is similarly extended. Whether the number of staff is still adequate for the fulfillment of the duties of the compliance function should be monitored regularly by the investment firm.

36. In addition to human resources, sufficient IT resources should be allocated to the compliance function.

37. Adequate resources also include the allocation of an appropriate budget for the compliance function. The compliance officer should be consulted before the budget is determined. All decisions for significant cuts in the budget should be documented in writing and contain detailed explanations.

38. Compliance staff should at all times have access to the relevant information for their tasks including all relevant databases. In order to have a permanent overview of the areas of the investment firm where sensitive or relevant information might arise, the compliance officer should have access to all information systems within the investment firm as well as any internal or external audit reports or other reporting to senior management or the supervisory board, if any. Where relevant, the compliance officer should also be granted right of attendance for meetings of senior management or the supervisory function. Where this right is not granted, this should be documented and explained in writing. For this, the compliance officer should have in-depth knowledge of the investment firm's organisation, corporate culture and decision-making processes in order to be able to identify for which meetings his or her attendance is important.

39. In order to ensure that compliance staff have the authority required for their duties, the senior management of the investment firm should support them in the exercise of these duties. Authority also implies possessing adequate expertise and relevant personal skills, and may be enhanced by the investment firm's compliance policy (or 'charter') explicitly acknowledging the specific authority of the compliance staff.

40. The necessary expertise of all compliance staff requires knowledge of MiFID and the respective national laws as well as the applicable standards and guidelines set out by ESMA and competent authorities on these provisions, as far as these are relevant for the provision of their tasks. A higher level of expertise is necessary for the designated compliance officer.

41. The compliance officer should demonstrate sufficient professional experience where this is necessary to be able to assess the (potential) compliance risks and conflicts of interest inherent in the investment firm's business activities. The required professional experience may have, amongst others, been acquired in operational positions, in other control functions or in regulatory functions. Additionally, the compliance officer should have specific knowledge of the different business activities provided by the investment firm. The relevant expertise required may differ from one investment firm to another, as the nature of the main compliance risks that firms face will differ. In respect of Article 5(1)(d) of the MiFID Implementing Directive, a newly employed compliance officer may therefore have the need for specialised knowledge focused on the specific business model of the investment firm even though this person has been previously appointed as compliance officer for another investment firm if the business model and inherent risks between the investment firms differ widely.

**Q5: Please provide your comments (with reasons) on any or all aspects of this guideline on the effectiveness of the compliance function.**

Further instructions are needed because of the equal enforcement of the requirements in the different institutions. Only the current knowledge gets more detailed, if there is no unambiguous requirement of the expectable level. As you can see in point of 35: it is obvious that the compliance function has to



adjust in the case of increase. But we still don't know, either according to the "rule of thumb", what it means in the practice.

There are no minimum benchmarks for what we have to understand in this case, so the supply with sources of the compliance function varies significantly by institutes.

It is hardly pending, if the current document changes it. It does not pass the current generalities neither in point of the human resources (qualitative and quantitative), nor the IT or other supports.

Minimum requirements, examples, and excluding reasons have to be specified to pass the current rules.

#### **IV.III. Independence of the compliance function**

**Investment firms should ensure that the compliance function holds a position in the organisational structure that ensures that the compliance officer and other compliance staff act independently when performing their tasks, and that the compliance officer is appointed and replaced by senior management or the supervisory function.**

45. While senior management is responsible for establishing an appropriate compliance organisation and for monitoring the effectiveness of the organisation that has been implemented, the tasks performed by the compliance function in the day-to-day business should be carried out independently from senior management and other units of the investment firm. In particular, the investment firm's organisation should ensure that other business units may not issue instructions or otherwise influence compliance staff and their activities. Senior management's instructions to compliance staff should be general and should not interfere with the compliance function's day-to-day activities. The investment firm should ensure that the decision on the appointment and replacement of the compliance officer may only be taken by senior management or the supervisory function.

**Q7: Do you agree that investment firms should ensure that the compliance function holds a position in the organisational structure that ensures that the compliance officer and other compliance function staff are independent when performing their tasks? Please also state the reasons for your answer.**

**Q8: Do you agree that investment firms should ensure that the organisation of the compliance function guarantees that the compliance officer's daily decisions are taken in-dependently from any influence of the business units and that the compliance officer is appointed and replaced by senior management only?**

In our opinion the independence can be interpreted only inside of the institution and in point of monitored process, decisions and departments. According to the document the "owner" of the final responsibility belongs to the management. The independence from this can be hard interpreted, particularly inside of the institution. Both the budget and the organizational structure and the personnel decisions depend on the management. The independence has to be created in point of the independence of the business areas.

The independence from the management can be executed only, if certain decisions are placed outside of the institution.

#### **IV.IV. Exemptions**

**Where an investment firm considers that it may not be proportionate for it to comply with the requirements set out in Article 6(3) of the MiFID Implementing Directive, it should assess whether the effectiveness of the compliance function is compromised by the proposed arrangements. This assessment should be reviewed regularly.**

46. Investment firms should decide on measures that are best suited to the firm's particular nature and circumstances. In deciding this, investment firms should take the following criteria (inter alia) into account:

(a) The types of investment services, activities and ancillary services and other business activities provided by the investment firm (including those not related to investment services, activities and ancillary services), interaction between the investment services and activities and ancillary services and other business activities carried out by the investment firm.

(b) The scope and volume of the investment services, activities and ancillary services carried out (absolute and relative to other business activities), balance sheet total and income of the investment firm from commissions and fees and other income in the context of the provision of investment services, activities and ancillary services.

(c) The types of financial instruments offered to clients.

- (d) The types of customers targeted by the investment firm (professional, retail, eligible counter-parties).
  - (e) Staff headcount.
  - (f) Whether the investment firm is part of an economic group under Article 1 of the Seventh Council Directive of 13 June 1983 on consolidated accounts (Directive 83/349/EC).
  - (g) Services provided through a commercial network, i.e. tied agents, or branches.
  - (h) Cross-border activities provided by the investment firm.
  - (i) Organisation and sophistication of the IT systems.
47. Competent authorities may also find these criteria useful in determining which types of investment firms may benefit from the exemptions under Article 6(3) of the MiFID Implementing Directive.
48. An investment firm may fall under the exemption if the performance of the necessary compliance tasks – including where appropriate combined with other control functions – does not require a full-time position due to the nature, scale and complexity of the firm's business, and the nature and range of the investment services, activities and ancillary services offered.
49. It may be disproportionate for a smaller investment firm with a very narrow field of activities and/or limited human resources to appoint a separate compliance officer. Where an investment firm makes use of the exemption, conflicts of interest between the tasks performed by the relevant persons should be minimised as much as possible.
50. The compliance function should generally not be combined with the legal unit, or be subordinate to internal control functions, where this could undermine the compliance function's independence.
51. Where an investment firm makes use of the exemption, it should document how this is justified, taking into account the principle of proportionality so that the competent authority is able to assess this.

**Q9: Please provide your comments (with reasons) on any or all aspects of this guideline on Article 6(3) exemptions.**

As the other functions have the rules relative to the human resources, we would consider necessary the framing of more specific requirements (at least professional education, experiments etc.). There are no questions of responsibility however it has great importance in point of the separation of the functions, effective operation and the examination of the effectiveness.

If the document only details the previous general requirements (complexity, customer basis, size etc.) is not an improvement, when their effects on the sources disappear. We don't know better, what the "appropriate" means, and it does not help the understanding, if the "appropriate for" is further more detailed.

#### **IV.V. Combining the compliance function with other functions**

**With the exception of the internal audit function, the independence of the compliance function is not necessarily compromised by compliance staff overlapping with other control functions. The overlap of the compliance function with other control functions should be documented, including the reasons for any overlap.**

52. Compliance staff should generally not be involved in the activities they monitor. However, overlap of the compliance function with other control units at the same level (such as money laundering prevention or risk management) may be acceptable if this does not generate conflicts of interests or compromise the effectiveness of the compliance function.

53. Combining the compliance function with the internal audit function should generally be avoided as this is likely to undermine the independence of the compliance function because the internal audit function is charged with the oversight of the compliance function.

54. Any overlap of the compliance function with other control functions should be documented by investment firms so that competent authorities are able to assess whether the combination of functions is adequate. Whether staff from other control functions also perform compliance tasks, should also be a relevant consideration in the determination of the relevant number of staff necessary for the compliance function.

55. Regardless of any overlap, the compliance function should in any case coordinate its activities with the control activities performed by other units.



**Q10: Please provide your comments (with reasons) on any or all aspects of this guideline on combining the compliance function with other functions.**

In our point of view, if we strictly consider the three levels of controls as a base (business unit, compliance, internal audit), conflict of interest case would only happen if compliance performed monitoring on their own controls. In case if the scope of the monitoring activity is part of the business process (eg.: AML customer due diligence) we don't see any conflict of interest. Controls that are in the responsibility of compliance, the inspection of internal audit only, is satisfactory. From a risk point of view, it is necessary to separate risk management and risk measurement functions, combining compliance with risk management is not possible, but the combination with risk measurement may be feasible. The newly emerged question is very similar to a previous one: in case of a financial services provider, where the risk management and risk measurement are different, what combination would be possible, and what is the overlap between compliance- and operational risks. In case of clearly defined responsibilities, strong internal audit function, and strict documentation the combination of compliance and other control function would not cause a conflict of interest case that may be impossible to handle.

## **V.I. Review of the compliance function by competent authorities**

**Competent authorities should review how investment firms implement and maintain the MiFID compliance function requirements. This should apply in the context of the authorisation process, as well as in the course of on-going supervision.**

63. Article 7 of MiFID states that a competent authority shall not grant authorisation to an investment firm unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to MiFID. Accordingly, the competent authority should assess whether a firm's compliance function is adequately resourced and organised and whether adequate reporting lines have been established. It should require that any necessary amendments are made to the compliance function as a condition for authorisation.

64. Additionally, as part of the ongoing supervisory process, a competent authority should assess whether the measures implemented by the investment firm for the compliance function are adequate, and whether the compliance function fulfils its responsibilities appropriately. Competent authorities should also assess whether amendments to the resources and organisation of the compliance function are required due to changes in the business model of the investment firm, and where such amendments are necessary, monitor whether these amendments have been implemented (having provided a reasonable timeframe for the firm to do so).

65. Some competent authorities license or approve the nominated compliance officer following an assessment of the qualifications of the compliance officer. This assessment may include an analysis of the compliance officer's curriculum vitae, as well as an interview with the designated person. This sort of licensing process may help to strengthen the position of the compliance function within the investment firm and in relation to third parties.

66. Other regulatory approaches impose the responsibility for the assessment of the compliance officer's qualification solely on the senior management of the investment firm. Senior management assesses the prospective compliance officer's qualifications before appointment. Whether the investment firm properly complies with this requirement is then assessed within the general review of the firm's compliance with the relevant MiFID requirements.

67. Some Member States require investment firms to notify the competent authorities of the appointment and replacement of the compliance officer. In some jurisdictions, this notification must also be accompanied by a detailed statement on the grounds for the replacement. This can help competent authorities gain insight into possible tensions between the compliance officer and senior management which could be an indication of deficiencies in the compliance function's independence.

68. The above practices could be helpful to other competent authorities.

**Q12: Do you agree that competent authorities should also review, as part of the ongoing supervisory process, whether measures implemented by investment firms for the compliance function are adequate, and whether the compliance function fulfils its responsibilities appropriately? Please also state the reasons for your answer.**

**Q13: Do you agree that competent authorities should also assess whether amendments to the organisation of the compliance function are required due to changes in the scope of the business model of the investment firm, and where such amendments are necessary, monitor whether these amendments have been implemented? 18**

We agree that the pointing on the deficiencies of the control environment by an external authority and the preventive awareness for the system-level errors contribute to the effective compliance function. The examination by the authority if the tracking of the changes of the business model occurred can be interpreted only in that case, if the context is obvious among the business model, the activity of the investment firm, its size etc. and the compliance function (headcount, independence) (i.e. Q9). Without this it is not understandable for what and in which form the authority measures the compliance. The consultation paper mentions the differences between the member states (which could mean the anomaly because of the different implementation), so the requirements could and have to be drafted on the basis of the more specified requirements and the practical experiences. The compliance can be only previous and continuous assessed, if the requirements are obvious.

If an authority reveals a deficiency concerning compliance with MiFID rules, the insufficiency of control environment (risk management, internal audit, etc.) has to be investigated accordingly, including deficiencies caused by lack of resources.