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| 22 May 2014 |

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| Reply form for the  ESMA MiFID II/MiFIR Consultation Paper    Template for comments  for the ESMA MiFID II/MiFIR Discussion Paper |
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| Date: 22 May 2014 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA MiFID II/MiFIR Consultation Paper, published on the ESMA website ([here](http://www.esma.europa.eu/content/Consultation-Paper-MiFID-IIMiFIR)).

***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, please follow the instructions described below:

1. use this form and send your responses in Word format;
2. do not remove the tags of type <ESMA\_QUESTION\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. 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:

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

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

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 **1 August 2014**.

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 ‘Disclaimer’.

Overview

Investor protection

* 1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

##### Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

* 1. Investment advice and the use of distribution channels

##### Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?

<ESMA\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_2>

* 1. Compliance function

##### Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?

<ESMA\_QUESTION\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_3>

##### Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?

<ESMA\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_4>

* 1. Complaints-handling

##### Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?

<ESMA\_QUESTION\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_5>

* 1. Record-keeping (other than recording of telephone conversations or other electronic communications)

##### Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.

<ESMA\_QUESTION\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

##### What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.

<ESMA\_QUESTION\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_7>

* 1. Recording of telephone conversations and electronic communications

##### What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?

<ESMA\_QUESTION\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_8>

##### Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?

<ESMA\_QUESTION\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_9>

##### Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?

<ESMA\_QUESTION\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_10>

##### Should clients be required to sign these minutes or notes?

<ESMA\_QUESTION\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_11>

##### Do you agree with the proposals for storage and retention set out in the above draft technical advice?

<ESMA\_QUESTION\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_12>

##### More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?

<ESMA\_QUESTION\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_13>

* 1. Product governance

##### Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.

<ESMA\_QUESTION\_14>

ESMA should clarify first the scope/definition of “product” and “distribution”:

* On “product”: MiFID covers financial instruments and only captures those “products” that aren’t yet covered by any other EU regulation such as UCITS, PRIPS, AIFM. ESMA should make clear that UCITS/AIF are not covered by MIFID II and should clarify the products it has in mind so our members –asset managers- can figure out how they are involved.

We want to highlight that for ETF and some rare others quoted funds, (“freely tradable shares”), there is generally no distribution agreement between producers and distributors and as a result, it is not possible to apply the “product governance” requirements described in this section.

* On “Distribution”: MIFID refers only to a list of investment services.

The distribution services under MiFID are comprised of investment advice, portfolio management, reception and transmission of orders and dealing on own account. Secondary trading of financial instruments should not be perceived as a distribution channel. Secondary market trading can only be seen as a means of executing client orders, once the investment decision has been reached. Hence, secondary markets can only be understood as trading venues within the meaning of MiFID II Art. 4(1)(24) for executing orders resulting from distribution services under MiFID, not as distribution service of its own.

With this in mind we believe that the product governance requirements at the distributor’s level should therefore be triggered by the provision of a relevant distribution service under MiFID regardless whether the consecutive client order is being executed on the primary or secondary market.

Nonetheless, and for the avoidance of doubt, the final technical advice should clarify which investment services qualify as distribution for the purpose of product governance arrangements.

<ESMA\_QUESTION\_14>

##### When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?

<ESMA\_QUESTION\_15>

Yes, as long as the “written agreement” shall be but in place at the initiative of the distributor - the sole responsible for the distribution process- and the manufacturer should not bear the responsibility to put in place the legal agreement.

<ESMA\_QUESTION\_15>

##### Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?

<ESMA\_QUESTION\_16>

No

It would seem disproportionate to issue specific rules on that topic (detailing the type/level of information to be provided to the manufacturer). The principle of exchanging information could be requested but the type of information, timing and other arrangements should be subject to the decisions of the parties concerned.

<ESMA\_QUESTION\_16>

##### What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product’s target market)?

<ESMA\_QUESTION\_17>

This raises the question to what extent manufacturers can/should be in the position to intervene in the determination of the target client group at the distributor level, if – according to the draft technical advice – distributors are required to set up their own product governance arrangements and to identify target client groups for each distributed product.

In our view, it is preferable to require the product manufacturer to identify, in general terms, the target market of each product. Investment firms distributing products to the end-clients should then take this determination into strong consideration, while still being allowed to sell a product outside the suggested target market where this is in line with the distributor’s suitability and appropriateness assessment of its client (e.g. certain more rewarding/riskier products might be added to a client’s portfolio to diversify the overall investment portfolio).

**In any event, it is of utmost importance that product manufacturers are not considered responsible for any actions taken by distributors in their course of business.** Investment firms distributing investment products act in their own capacity by performing investment services under MiFID. They are subject to separate regulatory requirements and to supervision by competent authorities. Hence, product manufacturers becoming aware of deficiencies at the distributor level should be expected to take corrective actions as appropriate, but must not incur responsibility or be held liable for the distributor’s shortcomings.

In this context, we would also like to point out that there are no uniform criteria for classifying clients that go beyond the general client categorisation as retail or professional according to Annex II of MiFID. Therefore, the duty to determine the target market for a product should not imply a categorisation below that level in order to avoid inconsistent standards being applied by different distribution channels.

**We propose that manufacturers are only asked to describe the investment objectives their products are intended to match.**

Lastly, we are uncertain of the advantages to specify groups of investors for whom the product is not compatible, as it is the distributors’ ultimate responsibility to ensure suitability of the product.

<ESMA\_QUESTION\_17>

##### What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?

<ESMA\_QUESTION\_18>

The distributor is legally the sole responsible for the distribution process. In the situation where products are not sold as envisaged, the liability cannot be shifted onto the manufacturer, since the latter is not in charge of the final marketing activity toward end-client.

This being said, given that the unwelcomed situation could have impacts on the manufacturer, such as for example, unforeseen redemptions, it makes sense that the distributor keeps the manufacturer informed. Timing and contents should be left to the decision of the parties concerned.

<ESMA\_QUESTION\_18>

##### Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.

<ESMA\_QUESTION\_19>

No. And we fear that new layers of rules would blur even more the respective responsibilities.

**The risk of confusion is on the client’s side with a high likelihood of the client being sent back and forth between manufacturer and distributor in case of issues.**

First, as a general comment, rather than detailing in a specific regulation such as MIFID II the rules that should prevail in manufacturer / distributor relationship, it would seem more adequate to refer to the PRIIPs/UCITS/AIFM Directives.

This approach would avoid any discrepancies between the PRIIPs/UCITS/AIFM Directives and the MIFID II regulation.

From an operational point of view, this would facilitate the implementation by management companies of their various duties towards their clients.

On a more specific approach, we believe that there is a risk of confusion between the responsibilities of manufacturers and distributors.

We disagree with the following detailed requirements:

* DTA.7.8 (page 46): When creating a product, firms should specify an identified target market, i.e. a specific “group of investors” …”at a sufficient granular level” and any group of investors “not compatible” with the product;

We do not agree with this wording.

As previously said in our answer to Q 17, we would like to point out that there are no uniform criteria for classifying clients that go beyond the general client categorisation as retail or professional according to Annex II of MiFID. Therefore, the duty to determine the target market for a product should not imply a categorisation below that level **in order to avoid inconsistent standards being applied by different distribution channels.**

We propose that manufacturers be only asked to describe the investment objectives their products are intended to match such as horizon of investment, risk acceptance, and other criteria provided for the KID/KIID so to ensure consistency between products.

The distributor should be the sole responsible for targeting client market segment and selecting investors.

Responsibilities need to be clearly separated.

* DTA.9.(page 47): Investment firms should undertake a scenario analysis of their products, with particular tests on “poor investor outcome“ scenario and its causes;

ESMA should clarify what kind of products it has in mind for this specific requirement, as it doesn’t cover products ruled by UCITS/AIF and PRIIPs regulation

* DTA.11 (page 47): Investment firms should ensure that information given to distributors is of an “adequate standard”, i.e. includes information about the ”appropriate channel for the product, the product approval process and the target market assessment”.

“…appropriate channel for the product..”: it could be a recommendation from manufacturers, not a mandatory indication for the distributors. Distributors should remain in charge of the distribution.

“…the product approval process…”: what does ESMA means? It certainly cannot be the minutes of the meetings leading to the approval of the product; this is internal and confidential information of the manufacturer. Manufacturers do of course communicate all regulatory information about the product (Directive UCITS IV).

* DTA.12.13.14.15 (page 48): Manufacturers should review their products on a regular basis:
  + - * Identifying crucial events that may affect risk or return of the product (14)
      * Taking appropriate actions when such events occur (15**)**

This typically interferes with UCITS/IAF and PRIIPs regulation. Besides, ESMA shouldn’t create an un-level playing field between investment services ruled by MIFID and others products ruled by others Directives.

* DTA.17 (page 49): Distributors should determine a list of clients whose needs are not compatible with the product but nevertheless could perform suitability tests on these very same clients.

There is some inconsistency in the existing and proposed rules. A list of “not compatible” clients is useless. Some riskier products might be added to a client’s portfolio to diversify the overall investment portfolio, although this client has a low risk profile.

* DTA.21: Distributors should provide manufacturers with“sales information” such as for example, “copies of promotional material and other information to support product review carried out by manufacturers”.

French distributors already have the obligation to communicate their promotional material to the manufacturers for validation.

The relevance of passing sales information to the manufacturers should be left to the agreement of the parties concerned. (see our answer to Q.16)

- DTA.27: The intermediate distributor must ensure that relevant information is passed both ways (i and ii) and “apply the product governance obligations for manufacturers, as relevant, in relation to the service they provide.”(iii)

The obligations included in (iii) are ambiguous as the exact role of the intermediate distributor.

<ESMA\_QUESTION\_19>

##### Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.

<ESMA\_QUESTION\_20>

No.

<ESMA\_QUESTION\_20>

##### For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?

<ESMA\_QUESTION\_21>

The costs incurred are difficult to assess in such short notice but it is safe to say that they would be high.

They would impact product manufacturers as well as distributors and, as a result, returns to clients.

We can anticipate that the requirements would have cost impact on many business units such as:

* Information system
* Organization of the Controls of 1st and 2nd level
* Reporting
* Client service
* Legal service

These costs would eventually reflect on prices charged to the client and impact returns.

<ESMA\_QUESTION\_21>

* 1. Safeguarding of client assets

##### Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?

<ESMA\_QUESTION\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_22>

##### What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm’s compliance with its obligations regarding the safeguarding of client instruments and funds?

<ESMA\_QUESTION\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_23>

##### Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?

<ESMA\_QUESTION\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_24>

##### Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?

<ESMA\_QUESTION\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_25>

##### Do you agree with the proposal to require a reasonable link between the client’s obligation and the financial instruments or funds subject to TTCA?

<ESMA\_QUESTION\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_26>

##### Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?

<ESMA\_QUESTION\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_27>

##### Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?

<ESMA\_QUESTION\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_28>

##### Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?

<ESMA\_QUESTION\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_29>

##### Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?

<ESMA\_QUESTION\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_30>

##### Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?

<ESMA\_QUESTION\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_31>

##### Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?

<ESMA\_QUESTION\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_32>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.

<ESMA\_QUESTION\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_33>

##### Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?

<ESMA\_QUESTION\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_34>

##### Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?

<ESMA\_QUESTION\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_35>

##### Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?

<ESMA\_QUESTION\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_36>

##### Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?

<ESMA\_QUESTION\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_37>

##### Do you place any client funds in a credit institution within your group? If so, what proportion of the total?

<ESMA\_QUESTION\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_38>

##### What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?

<ESMA\_QUESTION\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_39>

##### What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?

<ESMA\_QUESTION\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_40>

##### What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?

<ESMA\_QUESTION\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_41>

##### Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?

<ESMA\_QUESTION\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_42>

##### Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?

<ESMA\_QUESTION\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_43>

##### What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?

<ESMA\_QUESTION\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_44>

##### Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?

<ESMA\_QUESTION\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_45>

##### Should the option of ‘other equivalent measures’ for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?

<ESMA\_QUESTION\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_46>

##### Should firms be required to develop additional systems to mitigate the risks of ‘other equivalent measures’ and require specific risk disclosures to clients where a firm must rely on such ‘other equivalent measures’, where not already covered by the Article 32(4) of the MiFID Implementing Directive?

<ESMA\_QUESTION\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_47>

##### What would be the on-going costs of making disclosures to clients when relying on ‘other equivalent measures’?

<ESMA\_QUESTION\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_48>

##### Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client’s financial instruments to settle the transactions of another client, including:

<ESMA\_QUESTION\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_49>

##### Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?

<ESMA\_QUESTION\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_50>

##### Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?

<ESMA\_QUESTION\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_51>

##### Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?

<ESMA\_QUESTION\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_52>

##### Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?

<ESMA\_QUESTION\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_53>

* 1. Conflicts of interest

##### Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.

<ESMA\_QUESTION\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_54>

##### Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.

<ESMA\_QUESTION\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_55>

##### Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA\_QUESTION\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_56>

##### Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA\_QUESTION\_57>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_57>

* 1. Underwriting and placing – conflicts of interest and provision of information to clients

##### Are there additional details or requirements you believe should be included?

<ESMA\_QUESTION\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_58>

##### Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client’s interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?

<ESMA\_QUESTION\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_59>

##### Have you already put in place organisational arrangements that comply with these requirements?

<ESMA\_QUESTION\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_60>

##### How would you need to change your processes to meet the requirements?

<ESMA\_QUESTION\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_61>

##### What costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_62>

* 1. Remuneration

##### Do you agree with the definition of the scope of the requirements as proposed? If not, why not?

<ESMA\_QUESTION\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_63>

##### Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?

<ESMA\_QUESTION\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_64>

* 1. Fair, clear and not misleading information

##### Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?

<ESMA\_QUESTION\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_65>

##### Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?

<ESMA\_QUESTION\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_66>

##### Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?

<ESMA\_QUESTION\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_67>

* 1. Information to clients about investment advice and financial instruments

##### Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?

<ESMA\_QUESTION\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_68>

##### Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?

<ESMA\_QUESTION\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_69>

##### Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.

<ESMA\_QUESTION\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_70>

* 1. Information to clients on costs and charges

##### Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?

<ESMA\_QUESTION\_71>

No.

We do not agree with the principle of applying the same information to professional and non-professional clients.

We believe that information to professional clients should remain tailored to their specific needs. Information as well as investment services provided to professional clients are mostly based on bilateral agreements, with costs and charges being an important part of each agreement.

It is of course always possible for a professional client to opt for a non-professional categorization and therefore to receive retail type information.

<ESMA\_QUESTION\_71>

##### Do you agree with the scope of the point of sale information requirements?

<ESMA\_QUESTION\_72>

We do agree with the principle of delivering information at point of the sale but we do have some reservations on certain cost disclosures.

-When recommending or marketing financial instruments (3.i) and when providing investment service requiring providing a KID/KIID to the client (3.ii)., investment firms shouldn’t be asked to add any information about the financial instrument itself that is not already provided by the product manufacturer and/or disclosed in the KID/KIID.

When searching for a fund, clients should not get two different sets of information on the same product depending on whether they find the product on the internet (where they are provided with the KID/KIID) or whether they are recommended with the product by their investment advisor (who should, according to ESMA’ proposal, provide them not only with the KID/KIID but also with other costs related to the fund, such as the transaction costs for example). We think that the same information should be provided in both cases and the investment advisor shouldn’t be required to provide any additional information on the fund itself.

-where providing portfolio management and investment advice services, ESMA writes in .56 p. 112: “ with regard to information provided about the costs related to the investment and/or ancillary services, the investment firm should provide personalised/tailored information of the costs that the client will incur “.

We believe it is more appropriate to deliver costs and charges information on a generic basis rather than on actually incurred costs. The reason is that these two investment services have tailor-made fees depending on the specific financial instruments/portfolio recommended to the client needs and cannot rely on past or current costs.

Moreover, contingent costs related to transactions are only known on ex-post, are subject to misleading estimation when given on ex-ante basis and shouldn’t be included in the scope.

<ESMA\_QUESTION\_72>

##### Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?

<ESMA\_QUESTION\_73>

Yes, under conditions.

We understand that a continuous relationship should be understood as a portfolio management relationship or a continued advisory relationship between an investment firm and a client (point 32).

In portfolio management, detailed annual reports on costs and charges are already provided to the client. We see no need for further regulation.

On investment advice delivered on an on-going basis, we advise to leave investment firms and their clients deciding on the option of an annual reporting recapitulating all costs, taking into account the fact that the client has been informed of the details at the time of each transaction.

**Such a recapitulative report should be considered as a service enhancement delivered to the client.**

<ESMA\_QUESTION\_73>

##### Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.

<ESMA\_QUESTION\_74>

*In order to facilitate the reading of our answer, we have recalled below the detailed costs and charges listed by ESMA.*

Costs charged for investment services: portfolio management, investment advice, execution, reception/transmission...

|  |  |
| --- | --- |
| ***Costs and associated charges charged for the investment service(s)*** | |
| **Cost items to be disclosed** | **Examples** |
| One-off charges related to the provision of an  investment service | Deposit fee, termination fee and switching costs. |
| On-going related to the provision of an investment  service charge | Management fee, advisory fee, custodian fee. |
| All costs related to  transactions initiated in the course of the provision of  an investment service | Broker commissions, entry- and exit charges paid to the fund manager, platform fees, marks up embedded in  the transaction price, stamp duty, transactions tax and foreign exchange costs. |
| Any charges that  are related to  ancillary services | Research costs. Custody costs. |

|  |  |
| --- | --- |
| ***Costs and associated charges related to the financial instrument*** | |
| **Cost items to be disclosed** | **Examples** |
| One-off charges | Front-loaded management fee, structuring fee, distribution fee |
| On-going charges | Management fee, performance fee, service costs, swap fee, securities lending costs and taxes, financing costs. |
| All costs related to  the transactions | Broker commissions, entry- and exit charges paid by the fund, marks up embedded in the transaction price,  stamp duty, transactions tax and foreign exchange costs. |

1. We are no reservations on disclosing broker commissions (or brokerage fees) but it would be very difficult or impossible for a portfolio manager to carve out some transaction cost items.

Examples: “Swap fee, Securities lending costs and taxes, Marks up embedded in the transaction price, Foreign exchange costs, and stamp duty”.

The reason is that these costs are either only known by the broker or embedded in the bid/ask spread, the portfolio manager chooses the best global price. That’s what is key for the performance.

Moreover, this “transaction cost” disclosure, difficult and costly to achieve, is not consistent with the requirements on the KID/KIID; this disclosure would be an additional requirement above the KID/KIID level and would create an unlevel-playing field between investment services and UCITS/IAF funds.

Lastly, we doubt that the retail investor is in a position to fully appreciate detailed transaction costs.

1. As to **research costs**, it would not be possible to itemise them on a specific investment service or specific portfolio, since research includes macroeconomic studies, country or sectorial analysis that are used on a global basis by the investment firm.

The disclosure of too many technical costs would lead the client into perplexity and discomfort. Performance should be the ultimate judge on the quality of the investment service.

Lastly, and very importantly, the transaction costs are already covered in the **“Best execution”** rules of MIFID.

1. **Personalisation of costs** disclosure on ex-post is possible and already done for mandate and dedicated products but would face very important practical difficulties and could not hence be accurate for collective investments.

As long as there is more than one investor in a product together with continuing in-flows and out-flows, it is technically impossible to personalise certain costs.

In order to maintain consistency between investment services and products, we strongly advise not to impose personalisation of costs but to leave it to the decision of the investment firm and its client when it is technically possible.

**Such a personalisation, when possible, should be considered as an optional service enhancement.**

1. **Disclosure on ex-ante basis on real amounts:** It would be very difficult or impossible to disclose ex-ante costs based on real amount when it comes to portfolio management service.

The reason lies with the fact that costs are linked to variable data not known at the point of sale such as market conditions, all types of financial instrument that will be used, size of the investment, turn-over of the portfolio, etc...

**Therefore ex-ante costs need to be disclosed on generic basis or on a maximum basis**.

And consistency with KID/KIID rules should be considered of the utmost importance.

<ESMA\_QUESTION\_74>

##### Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.

<ESMA\_QUESTION\_75>

Yes, we do agree, ex-ante costs should be provided on a generic basis.

Generic basis is to be understood as fee schedule or method of calculating.

However, we believe that the limitation in para. 56 of ESMA’s analysis according to which generic disclosure should be allowed only if “the investment firm ensures that the costs and charges provided in the generic disclosure are representative of the costs that the client would actually incur” is not appropriate in the broader context of the draft technical advice.

As explained in our reply to Q74, it would be very difficult or impossible to disclose ex-ante costs based on real amount when it comes to portfolio management service.

The reason lies with the fact that costs are linked to variable data not known at the point of sale such as market conditions, all types of financial instrument that will be used, size of the investment, turn-over of the portfolio, etc...

Therefore ex-ante costs need to be disclosed on generic basis or on a maximum basis.

And consistency with KID/KIID rules should be considered of the utmost importance.

<ESMA\_QUESTION\_75>

##### Do you have any other comments on the methodology for calculating the point of sale figures?

<ESMA\_QUESTION\_76>

We strongly recommend that the methodology for calculating figures be the same than the methodology implemented in the KID/KIID.

Having two different sets of calculating would be costly and cause confusion for investors as well as creating an un-level playing field between investments services and UCITS/AIF funds.

<ESMA\_QUESTION\_76>

##### Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?

<ESMA\_QUESTION\_77>

The display of cumulative costs and charges on an ex-ante basis would be meaningless for the client if it is not accompanied with cumulative returns over the same period; costs need to be compared to revenues in order to give a comprehensive understanding of an investment.

But calculating cumulative returns on an ex-ante basis needs to rely on market scenarios. There is no common market practice in drawing market scenarios. We would recommend to clearly stating the basis of those scenarios in order to avoid discrepancies on the methodology used by practitioners. Indeed, in the absence of precise criteria to ascertain future scenarios, information provided to clients will in fact be misleading.

Besides, costs and charges of a managed portfolio, varies from one year to another depending on events such as turn-over, type of instrument used, etc...; where it is possible to give an estimation for one year with an acceptable spread of error, the spread is no longer acceptable and would be misleading, leading to non-significant figures when cumulated over several years.

Display of cumulative costs (whatever their accuracy) would deter clients from investing in long-term products, even though these long-term products are the most suitable investments for them.

It is worth reminding that ESMA’s KIID consultation 09/949 concluded that cumulative costs in EUR value where seen by clients as being of little additional value and where hence dropped from the KIID.

<ESMA\_QUESTION\_77>

##### What costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_78>

The costs incurred are difficult to assess in such short notice but it is safe to say that they would be high.

They would impact product manufacturers as well as distributors, brokers and, as a result, returns to clients.

**We can anticipate that the requirements would have huge cost impact on many business units such as:**

* **Information system**
* **Accountancy**
* **Organization of the Controls of 1st and 2nd level**
* **Reporting**
* **Client service and claim-handling**

These costs would eventually reflect on prices charged to the client and impact returns.

More importantly, the costs and complexity of the information systems that would be necessary to serve these requirements would be to such an extent that banking networks would turn away from selling financial products ( i.e.funds and portfolio management services) and would rather go for simpler products such as bank saving accounts.

ESMA would create an un-level playing field between asset management products and bank products.

The need for the long-term financing of the economy would also be negatively impacted if long-term products are too costly for distribution.

<ESMA\_QUESTION\_78>

* 1. The legitimacy of inducements to be paid to/by a third person

##### Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.

<ESMA\_QUESTION\_79>

No, we don’t agree with the proposed exhaustive list of minor non-monetary benefits and with the analysis that investment research is a non-monetary benefit.

1. **It goes beyond MIFID II level 1**
2. **Research is used for the best interest of clients**
3. **ESMA should clarify how to distinguish “personalized research” and “tailored and bespoke research”**
4. **The impact on market has not been fully assessed**
5. **Our proposal**
6. **It goes beyond MIFID II level 1**

Nothing at level 1 nor in the Commission’s mandate mentions that level 2 measures should be developed on research as an inducement. Recital (74) of MiFID II shows that restrictions on inducements are predominantly viewed from the angle of the distribution and placing of financial products to clients, i.e. the purpose is to avoid firms being improperly influenced in their investment decisions by receiving and retaining benefits from product providers and issuers.

Such radical change needs a political decision at level 1 and should not stem from level 2 measures.

1. **Research is used for the best interest of clients**

We strongly believe that the current way the research is paid is not against but, on the contrary, in the best interest of clients.

That is indeed often common practice for a portfolio manager to agree higher execution rates to allow them to also obtain higher value research from a broker.

Portfolio management (and execution) is extremely competitive, with performance a key axis of competition. It would be self-defeating in our view for a manager to trade more than the optimal level or at a too high rate, as this would undermine performance. On the contrary, the execution rates reflect an optimal price that enables clients to benefit from competitive transaction fees while in the same time the transaction fees enable the client to benefit from a high-quality and diversified research. In fact, research directly assists the investment manager when making its investment decision and is to the advantage of the client and not to its detriment.

1. **ESMA should clarify how to distinguish “personalized” research and “tailored and bespoke” research and why the second one would impair clients’ best interests.**

ESMA intends to split research material between **minor** non-monetary benefits and **non-minor** non-monetary benefits. The latter would need to be directly paid by investment firms.

In the first category, ESMA includes in .5.i page 124: *“information or documentation relating to a financial instrument (including financial research) or an investment service. This information could be generic in nature or personalized to reflect the circumstances of an individual client”.*

In the second category, ESMA writes in its analysis .14 page 121: “*As such, any research that is tailored or bespoke in its content or rationed in how it is distributed or accessed would be of a scale and nature such that its provision is likely to influence the recipient’s behavior and cannot be a minor non-monetary benefit.”*

It would be much helpful if ESMA further clarifies the difference between “personalized” research and “tailored or bespoke” research.

For example, asset managers specializing in specific instruments –such as high-yield bonds, asset-backed securities, small and mid-cap equities, private equity, securitization, SRI approach,…-do rely on specific financial researches that are not always widely distributed and that could be tailor-made to specific products. They do contribute to the investment management decision and to the performance delivered to clients.

It is not clear whether, according to ESMA, it should be considered minor or non-minor non-monetary benefits.

It is not clear either why ESMA considers “tailored or bespoke” research against clients’ best interests.

Lastly, having to distinguish between different kinds of research material would be a difficult and risky enterprise, especially where it is provided by the same provider.

We suggest other solutions in .5 below.

1. **The impact on market has not been fully assessed**

The qualification of any research as a prohibited non-minor benefit will have a huge impact on the current market and was not intended by the EU co-legislator.

1. It is our understanding that the effect would lead to a massive increase of costs for active manager mandates in Europe.

Should research be considered as inducement, it would become a scarce commodity, available only to large investment firms.

Only large investment firms would be in a position to afford it while smaller actors would need to cut down their research unless they can reflect its costs to their clients through higher management fees.

Similarly, providers of research on specific financial instruments (e.g. small and mid-caps, asset-backed securities…) may not find enough buyers to sustain their business; as a consequence, specialized research providers would end to disappear for the benefit of large providers or large traditional markets and SME’s access to public financing would dry up.

The number of research providers would reduce, that would lead to a concentration of research material available in the market. Portfolio managers that are not in a position to finance abundant research would tend to rely on public ratings and therefore increase their dependency on ratings agencies. We want to stress out the increase of the systemic risk in markets.

1. If investment management companies will have to re-price the services they offer, they will face competition at least from passive management and in particular, from overseas managers.

Increasing cost of research would also favor passive management and index-linked products (in no need for research). As a result, States or corporates not included in indexes would be penalized for not getting access at a level-playing field to public financing.

Moreover, non-European investment firms still benefiting from an abundant research material would have a competitive advantage over European actors and their European subsidiaries would be able to benefit from it through in-house channels.

ESMA would create a distortion of competition in favor of Non-EU investment firms not subject to these rules.

1. **Our proposal**

We propose that research remains exclusively and rightly ruled by the **“Conflicts of Interests”** regulation, which provides investors full transparency and protection against conflicts of interests.

In addition, some countries have gone further in tightening these rules by implementing **commission sharing agreements (CSA)**, under which cost of research and cost of execution can be split to ensure that each provider is remunerated at the level it should be.

This unbundling introduced by major asset managers some years ago was the way to eradicate any conflict of interest because:

* research budget needed by each investment team is accurately estimated and brokers’ commissions are fixed in such a way that each team pay for its own research to the benefit of investors,
* thanks to the Commission Sharing Agreements de-correlation between turnover of assets within funds and research budget is guaranteed.

Moreover, CSA has proved that it has fostered competition in the quality of the research and in the formation of competitive prices.

As an illustration of transparency provided by current regulation on CSA in France, French asset managers have currently to publish a **“Report on Intermediation Fees”**. (RG AMF 314-82)

The Report gives full transparency on the intermediation fees related to “order reception, transmission and execution services” on the one hand and intermediation fees related to “Investment decision aid and order execution services” on the other hand.

The report also gives an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.

Such Report could be more detailed if need be in order to increase transparency and protection towards Investors in the use of transaction fees.

It’s also worth mentioning the **“Best selection” rules** included in the AMF regulation (RG AMF 314-75): investment firm must establish a detailed process for selecting their brokers, they must publicly disclose this process to the clients and finally they must regularly assess and review their selection.

**We think ESMA should consider favorably all these current regulations that ensure that research is distributed and financed in a fair and transparent way.**

<ESMA\_QUESTION\_79>

##### Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?

<ESMA\_QUESTION\_80>

No.

Preliminary

Scope of investment services contemplated in the answer: non-independent investment advice.

Regarding non-monetary benefits, financial assessment is random and unreliable, disclosure of amount shouldn’t be contemplated.

Allocating non-monetary benefits to an individual client portfolio is not possible as it is spread over a full range of investment services and clients.

Regarding monetary benefits, along with our answers to Questions 72 and 75 on chapter “Information on costs and charges”, we think that ex-ante information on monetary benefits should be disclosed on a generic basis and stick with the market practice:

* A maximum % of the amount invested as entry fees
* When relevant, an annual % of the amount invested

As for ex-post disclosure, we think that providing an exact amount (7.ii) and personalisation (7.iii) is difficult and costly ; it requires tracing all in/outflows of the client and therefore needs developing specific information systems between custodian and the distributors’ client service departments ; the costs will eventually be reflected to clients for a meagre benefit.

We think there’s no added value in providing a cash amount to the client as long as the client has received the method of calculating (as a % of the amount invested)

Providing the same display of information (in %) on ex-ante and on ex-post preserves the consistency of the information.

<ESMA\_QUESTION\_80>

##### Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.

<ESMA\_QUESTION\_81>

No.

We do not fully agree with the list of circumstances and situations that NCAs should consider when determining whether a quality enhancement test is not met.

The major concern is that the spirit of MIFID II Level 1 would not be respected. The list of criteria for determining what is not a service enhancement ends up in an excessive narrowing of service enhancement possibilities.

As such, the two first points (i) and (ii) of.10 of the Draft technical advice (page 124) lead to a quasi-ban on inducements for non-independent advisors.

1. **10.i :** we strongly disagree with this criteria. ESMA writes that quality enhancement test is not met when *”... fee or commission is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business”-*

Commissions shouldn’t be submitted to criteria of volume (if that is what ESMA intends in this unclear requirement). Commissions received must be assessed through the criteria established by MIFID I and II level 1 for non-independent advisors, i.e. being disclosed to the client, enhancing the service to the client and not impairing the client‘s best interest.

In that matter, AMF has issued clear and demanding positions on inducements and service enhancement (e.g. Position AMF 2013-10) that match the intention of the EU legislator.

It must be highlighted that, in the end, a fully equipped distributor, that has sound processes and systems, knowledgeable staff, etc all paid from commissions is in the end in the best interest of clients – if they aren’t allowed to use commission to invest in their business, that would leave the client in a bad situation, having to deal with a company which is not in a sound financial position.

We think that 10(i) should be deleted or dedicated only to non-monetary benefits.

1. **10.ii :** *ESMA writes* that quality enhancement test is not met when *”* *it* *does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client”.*

This condition could only apply where the regulatory requirements are of appropriate nature and scale.

We have noticed in the consultation paper that regulatory requirements have been significantly increased in the fields of

* *Product Governance*
* *Suitability Report and periodic review*
* *Costs and charges detailed reporting*
* *Reporting*

We therefore suggest that some of the regulatory enhancement suggested by MIFIF II level 1 and in ESMA’ draft technical advice be left to the consent of the parties and, as a result, be considered as a service enhancement and that regulatory requirements remain at a reachable level for all investment firms. See our suggestions below in 3.

Besides regulatory requirements may vary over time and space. Referring to “regulatory requirements” is not a clear, explicit and stable reference where, to the contrary, giving an explicit definition with positive criteria would be more helpful for assessing additional or higher quality services.

1. *We agree with .11 of the draft technical advice (page 124)*

**.11:** *ESMA writes “...it should be understood that a fee, commission or non -monetary benefit could be considered acceptable if it enables the client to receive access to a wider range of suitable financial instruments or the provision of non-independent advice on an on-going basis”*

We agree with these two criteria:

* Giving access to a wider range of suitable financial instruments
* Providing an on-going investment advice

On a more general approach, providing additional service above MIFID I level should be considered as a service enhancement.

1. We would like to propose more examples of service enhancement that could be offered to the client:

* **Giving a periodic suitability assessment**, at least annually, in line with the position of AMF 2013-10, should be a service enhancement where ESMA seems to consider it as a regulatory service in 2.17 Suitability, draft technical advice .3, page 134.
* **Giving an annual aggregate report on costs and charges**. Along with chapter 2.14 on Costs and Charges, Q/A. 73, we believe that providing a recapitulative report on costs and charges where there is a continuous investment advice relationship should be a service enhancement and not a regulatory requirement as ESMA mentions it page 105. §31.32.33.iii.
* **Giving a personalised report on costs and charges** when it is technically possible. Along with chapter 2.14 on Costs and Charges, Q/A. 74, we believe that providing a personalised report on costs and charges is a service enhancement and not should be a regulatory service as requested by ESMA.
* **Alerting the client on specific thresholds (% of gain or loss) agreed with client**. Along with chapter 2.20 Reporting to Clients, we think that special alerts agreed with clients should be a service enhancement and not a regulatory service as requested by ESMA.

1. In order to better articulate .10 and .11 we suggest that

* 10 (i) and 10 (ii) be suppressed and 10 (iii) and 10(iv) kept
* .11 be developed with more examples of positive criteria in a non-exhaustive list that would help investment firms to better comply with the principle of service enhancement.

Conclusion

MIFID II requirements for investor protection induce heavy costs for investment firms; these costs can be financed either through inducements or through client fees. We believe that inducements remain the best solution and insure the fairest allocation of costs and treatment between clients.

**Additionally and very importantly, no new rules should be imposed on funds distributors that would, rightly in our eyes, seem unfit for other competing investment solutions such as insurance-life, bank saving accounts or crowdfunding.**

<ESMA\_QUESTION\_81>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA\_QUESTION\_82>

Considering the huge economic impact of these requirements, it is more adequate to anticipate that:

* + - Some investment firms and research providers would face hard time to maintain their business as the balance of their business model will be disrupted (more costs, less revenues)
    - Clients will eventually pay higher fees for research and investment advice
    - Some public and private entities not covered by research nor included in market indexes would see their source of public financing drying up

<ESMA\_QUESTION\_82>

* 1. Investment advice on independent basis

##### Do you agree with the approach proposed in the technical advice above in order to ensure investment firm’s compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.

<ESMA\_QUESTION\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_83>

##### What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?

<ESMA\_QUESTION\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_84>

##### Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA\_QUESTION\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_85>

* 1. Suitability

##### Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?

<ESMA\_QUESTION\_86>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_86>

##### Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?

<ESMA\_QUESTION\_87>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_87>

##### What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently ‘personalised’ to have added value for the client, drawing on any initiatives in national markets?

<ESMA\_QUESTION\_88>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_88>

##### Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?

<ESMA\_QUESTION\_89>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_89>

* 1. Appropriateness

##### Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?

<ESMA\_QUESTION\_90>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_90>

##### Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?

<ESMA\_QUESTION\_91>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_91>

* 1. Client agreement

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.

<ESMA\_QUESTION\_92>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_92>

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?

<ESMA\_QUESTION\_93>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_93>

##### Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?

<ESMA\_QUESTION\_94>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_94>

##### Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?

<ESMA\_QUESTION\_95>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_95>

* 1. Reporting to clients

##### Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?

<ESMA\_QUESTION\_96>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_96>

##### Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?

<ESMA\_QUESTION\_97>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_97>

##### Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?

<ESMA\_QUESTION\_98>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_98>

##### Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?

<ESMA\_QUESTION\_99>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_99>

##### What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?

<ESMA\_QUESTION\_100>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_100>

* 1. Best execution

##### Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA’s objective of facilitating clear disclosures to clients?

<ESMA\_QUESTION\_101>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_101>

##### Do your policies and your review procedures already the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.

<ESMA\_QUESTION\_102>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_102>

* 1. Client order-handling

##### Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.

<ESMA\_QUESTION\_103>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_103>

* 1. Transactions executed with eligible counterparties

##### Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?

<ESMA\_QUESTION\_104>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_104>

##### For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:

<ESMA\_QUESTION\_105>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_105>

##### For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?

<ESMA\_QUESTION\_106>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_106>

* 1. Product intervention

##### Do you agree with the criteria proposed?

<ESMA\_QUESTION\_107>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_107>

##### Are there any additional criteria that you would suggest adding?

<ESMA\_QUESTION\_108>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_108>

Transparency

* 1. Liquid market for equity and equity-like instruments

##### Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA\_QUESTION\_109>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_109>

##### Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer’s home market? Please provide reasons for your answer.

<ESMA\_QUESTION\_110>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_110>

##### Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.

<ESMA\_QUESTION\_111>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_111>

##### Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA\_QUESTION\_112>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_112>

##### Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest?Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA\_QUESTION\_113>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_113>

##### Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.

<ESMA\_QUESTION\_114>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_114>

##### Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA\_QUESTION\_115>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_115>

##### Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?

<ESMA\_QUESTION\_116>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_116>

##### Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.

<ESMA\_QUESTION\_117>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_117>

##### Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.

<ESMA\_QUESTION\_118>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_118>

##### Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest?Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA\_QUESTION\_119>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_119>

##### Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?

<ESMA\_QUESTION\_120>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_120>

* 1. Delineation between bonds, structured finance products and money market instruments

##### Do you agree with ESMA’s assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?

<ESMA\_QUESTION\_121>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_121>

* 1. The definition of systematic internaliser

##### For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.

<ESMA\_QUESTION\_122>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_122>

##### Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?

<ESMA\_QUESTION\_123>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_123>

##### For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.

<ESMA\_QUESTION\_124>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_124>

##### Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_125>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_125>

##### ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:

<ESMA\_QUESTION\_126>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_126>

##### Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?

<ESMA\_QUESTION\_127>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_127>

##### For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.

<ESMA\_QUESTION\_128>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_128>

##### With regard to the ‘substantial basis’ criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_129>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_129>

##### Do you agree with ESMA’s proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.

<ESMA\_QUESTION\_130>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_130>

##### For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.

<ESMA\_QUESTION\_131>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_131>

##### Do you agree with ESMA’s proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?

<ESMA\_QUESTION\_132>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_132>

##### Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?

<ESMA\_QUESTION\_133>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_133>

##### Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.

<ESMA\_QUESTION\_134>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_134>

##### Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.

<ESMA\_QUESTION\_135>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_135>

##### What thresholds would you consider as adequate for the emission allowance market?

<ESMA\_QUESTION\_136>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_136>

* 1. Transactions in several securities and orders subject to conditions other than the current market price

##### Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?

<ESMA\_QUESTION\_137>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_137>

* 1. Exceptional market circumstances and conditions for updating quotes

##### Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA’s view on the conditions for updating the quotes? Please give reasons for your answer.

<ESMA\_QUESTION\_138>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_138>

* 1. Orders considerably exceeding the norm

##### Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?

<ESMA\_QUESTION\_139>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_139>

* 1. Prices falling within a public range close to market conditions

##### Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.

<ESMA\_QUESTION\_140>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_140>

* 1. Pre-trade transparency for systematic internalisers in non-equity instruments

##### Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

<ESMA\_QUESTION\_141>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_141>

##### Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?

<ESMA\_QUESTION\_142>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_142>

Data publication

* 1. Access to systematic internalisers’ quotes

##### Do you agree with the proposed definition of “regular and continuous” publication of quotes? If not, what would definition you suggest?

<ESMA\_QUESTION\_143>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_143>

##### Do you agree with the proposed definition of “normal trading hours”? Should the publication time be extended?

<ESMA\_QUESTION\_144>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_144>

##### Do you agree with the proposal regarding the means of publication of quotes?

<ESMA\_QUESTION\_145>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_145>

##### Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?

<ESMA\_QUESTION\_146>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_146>

##### Is there any other mean of communication that should be considered by ESMA?

<ESMA\_QUESTION\_147>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_147>

##### Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?

<ESMA\_QUESTION\_148>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_148>

##### Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?

<ESMA\_QUESTION\_149>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_149>

##### Do you agree with the imposing the publication on a ‘machine-readable’ and ‘human readable’ to investment firms publishing their quotes only through their own website?

<ESMA\_QUESTION\_150>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_150>

##### Do you agree with the requirements to consider that the publication is ‘easily accessible’?

<ESMA\_QUESTION\_151>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_151>

* 1. Publication of unexecuted client limit orders on shares traded on a venue

##### Do you think that publication of unexecuted orders through a data reporting service or through an investment firm’s website would effectively facilitate execution?

<ESMA\_QUESTION\_152>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_152>

##### Do you agree with this proposal. If not, what would you suggest?

<ESMA\_QUESTION\_153>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_153>

* 1. Reasonable commercial basis (RCB)

##### Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?

<ESMA\_QUESTION\_154>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_154>

##### Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?

<ESMA\_QUESTION\_155>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_155>

##### To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?

<ESMA\_QUESTION\_156>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_156>

##### What are you views on controlling charges by fixing a limit on the share of revenue that market data services can represent?

<ESMA\_QUESTION\_157>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_157>

##### Which percentage range for a revenue limit would you consider reasonable?

<ESMA\_QUESTION\_158>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_158>

##### If the definition of “*reasonable commercial basis*” is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?

<ESMA\_QUESTION\_159>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_159>

##### Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?

<ESMA\_QUESTION\_160>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_160>

##### Do you believe that if there are excessive prices in any of the other markets, the same definition of “*reasonable commercial basis*” would be appropriate, or that they should be treated differently? If the latter, what definition should be used?

<ESMA\_QUESTION\_161>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_161>

##### Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.

<ESMA\_QUESTION\_162>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_162>

##### What are your views on the costs of the different approaches?

<ESMA\_QUESTION\_163>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_163>

##### Is there some other approach you believe would be better? Why?

<ESMA\_QUESTION\_164>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_164>

##### Do you think that the offering of a ‘per-user’ pricing model designed to prevent multiple charging for the same information should be mandatory?

<ESMA\_QUESTION\_165>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_165>

##### If yes, in which circumstances?

<ESMA\_QUESTION\_166>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_166>

Micro-structural issues

* 1. Algorithmic and high frequency trading (HFT)

##### **Which would be your preferred option? Why?**

<ESMA\_QUESTION\_167>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_167>

##### **Can you identify any other advantages or disadvantages of the options put forward?**

<ESMA\_QUESTION\_168>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_168>

##### **How would you reduce the impact of the disadvantages identified in your preferred option?**

<ESMA\_QUESTION\_169>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_169>

##### **If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.**

<ESMA\_QUESTION\_170>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_170>

##### **Do you agree with the above assessment? If not, please elaborate.**

<ESMA\_QUESTION\_171>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_171>

* 1. Direct electronic access (DEA)

##### **Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?**

<ESMA\_QUESTION\_172>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_172>

##### **Is there any other activity that should be covered by the term “DEA”, other than DMA and SA? In particular, should AOR be considered within the DEA definition?**

<ESMA\_QUESTION\_173>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_173>

##### **Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?**

<ESMA\_QUESTION\_174>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_174>

##### **Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?**

<ESMA\_QUESTION\_175>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_175>

Requirements applying on and to trading venues

* 1. SME Growth Markets

##### Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?

<ESMA\_QUESTION\_176>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_176>

##### Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?

<ESMA\_QUESTION\_177>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_177>

##### Do you agree with the approach described above (in the box ), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?

<ESMA\_QUESTION\_178>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_178>

##### Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?

<ESMA\_QUESTION\_179>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_179>

##### Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the “*at least 50% criterion*” do you consider the most appropriate? Please give reasons for your answer.

<ESMA\_QUESTION\_180>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_180>

##### Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?

<ESMA\_QUESTION\_181>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_181>

##### Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are “appropriate”?

<ESMA\_QUESTION\_182>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_182>

##### Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM’s regulatory regime is effective?

<ESMA\_QUESTION\_183>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_183>

##### Do you think that there should be an appropriateness test for an SME-GM issuer’s management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?

<ESMA\_QUESTION\_184>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_184>

##### Do you think that there should be an appropriateness test for an SME-GM issuer’s systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?

<ESMA\_QUESTION\_185>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_185>

##### Do you agree with i, ii or iii below?

<ESMA\_QUESTION\_186>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_186>

##### Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?

<ESMA\_QUESTION\_187>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_187>

##### Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?

<ESMA\_QUESTION\_188>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_188>

##### Do you agree that SME-GMs should be able to take either a ‘top down’ or a ‘bottom up’ approach to their admission documents where a Prospectus is not required?

<ESMA\_QUESTION\_189>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_189>

##### Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?

<ESMA\_QUESTION\_190>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_190>

##### If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?

<ESMA\_QUESTION\_191>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_191>

##### Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?

<ESMA\_QUESTION\_192>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_192>

##### Do you agree with this initial assessment by ESMA?

<ESMA\_QUESTION\_193>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_193>

##### In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?

<ESMA\_QUESTION\_194>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_194>

##### How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?

<ESMA\_QUESTION\_195>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_195>

##### Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph 23) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?

<ESMA\_QUESTION\_196>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_196>

##### Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?

<ESMA\_QUESTION\_197>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_197>

##### What is your view on the possible requirements for the dissemination and storage of information?

<ESMA\_QUESTION\_198>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_198>

##### How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?

<ESMA\_QUESTION\_199>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_199>

##### How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?

<ESMA\_QUESTION\_200>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_200>

##### Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?

<ESMA\_QUESTION\_201>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_201>

* 1. Suspension and removal of financial instruments from trading

##### Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?

<ESMA\_QUESTION\_202>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_202>

##### Do you agree that NCAs would also need to consider the criteria described in paragraph 6 iii and iv, when making an assessment of relevant costs or risks?

<ESMA\_QUESTION\_203>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_203>

##### Which specific circumstances would you include in the list? Do you agree with the proposed examples?

<ESMA\_QUESTION\_204>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_204>

* 1. Substantial importance of a trading venue in a host Member State

##### Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?

<ESMA\_QUESTION\_205>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_205>

##### Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?

<ESMA\_QUESTION\_206>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_206>

* 1. Monitoring of compliance – information requirements for trading venues

##### Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?

<ESMA\_QUESTION\_207>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_207>

* 1. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour

##### Do you support the approach suggested by ESMA?

<ESMA\_QUESTION\_208>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_208>

##### Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?

<ESMA\_QUESTION\_209>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_209>

##### What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers’ dealings or major shareholders’ notifications)? Are there other public sources of information that could be useful for this purpose?

<ESMA\_QUESTION\_210>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_210>

##### Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?

<ESMA\_QUESTION\_211>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_211>

##### Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?

<ESMA\_QUESTION\_212>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_212>

Commodity derivatives

* 1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

##### Do you agree with ESMA’s approach on specifying contracts that “must” be physically settled and contracts that “can” be physically settled?

<ESMA\_QUESTION\_213>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_213>

##### Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.

<ESMA\_QUESTION\_214>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_214>

##### Do you agree with ESMA’s approach on specifying contracts that must be physically settled?

<ESMA\_QUESTION\_215>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_215>

##### How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.

<ESMA\_QUESTION\_216>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_216>

##### Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.

<ESMA\_QUESTION\_217>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_217>

##### How do you understand and how would you describe the concepts of “force majeure” and “other bona fide inability to settle” in this context?

<ESMA\_QUESTION\_218>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_218>

##### Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?

<ESMA\_QUESTION\_219>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_219>

##### Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?

<ESMA\_QUESTION\_220>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_220>

##### Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?

<ESMA\_QUESTION\_221>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_221>

##### Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?

<ESMA\_QUESTION\_222>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_222>

##### Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?

<ESMA\_QUESTION\_223>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_223>

##### Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?

<ESMA\_QUESTION\_224>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_224>

##### Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?

<ESMA\_QUESTION\_225>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_225>

##### Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?

<ESMA\_QUESTION\_226>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_226>

##### What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?

<ESMA\_QUESTION\_227>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_227>

##### What do you understand by the terms “reason of default or other termination event” and how does this differ from “except in the case of force majeure, default or other bona fide inability to perform”?

<ESMA\_QUESTION\_228>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_228>

* 1. Position reporting thresholds

##### Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.

<ESMA\_QUESTION\_229>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_229>

##### Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.

<ESMA\_QUESTION\_230>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_230>

##### Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?

<ESMA\_QUESTION\_231>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_231>

* 1. Position management powers of ESMA

##### Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?

<ESMA\_QUESTION\_232>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_232>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_233>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_233>

##### Do you agree with ESMA’s definition of a market fulfilling its economic function?

<ESMA\_QUESTION\_234>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_234>

##### Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?

<ESMA\_QUESTION\_235>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_235>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_236>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_236>

##### Do you consider that the above factors sufficiently take account of “the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives”? If not, what further factors would you propose?

<ESMA\_QUESTION\_237>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_237>

##### Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?

<ESMA\_QUESTION\_238>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_238>

##### What other factors and criteria should be taken into account?

<ESMA\_QUESTION\_239>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_239>

##### Do you agree that some factors are more important than others in determining what an “appropriate reduction of a position” is within a given market? If yes, which are the most important factors for ESMA to consider?

<ESMA\_QUESTION\_240>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_240>

##### Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?

<ESMA\_QUESTION\_241>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_241>

##### What other criteria and factors should be taken into account?

<ESMA\_QUESTION\_242>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_242>

##### If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?

<ESMA\_QUESTION\_243>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_243>

Portfolio compression

##### What are your views on the proposed approach for legal documentation and portfolio compression criteria?

<ESMA\_QUESTION\_244>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_244>

##### What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?

<ESMA\_QUESTION\_245>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_245>