

ESMA
103 rue de Grenelle
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Via Upload only to www.esma.europa.eu

15 October 2019

Submission on Guidelines on certain aspects of the MiFID II compliance function requirements

Dear Sir/Madam

The Irish MiFID Industry Association ('IMIA') welcomes the opportunity to provide a submission to ESMA on the Guidelines on certain aspects of the MiFID II compliance function requirements.

IMIA is the representative association for MiFID firms authorised in Ireland. Its Aims and Objectives are to:

- provide a central representation to the Central Bank of Ireland and other regulatory bodies on behalf of its members
- promote good industry practices on regulatory requirements
- host educational events on MiFID regulations and other regulatory issues impacting MiFID firms
- promote networking and peer interaction

Due to the wide range of activities conducted by members there may at times be some conflicting opinions on matters raised by Consultation papers. In accordance with IMIA's terms of reference for submissions to consultation papers it does not take a position on these opinions prior to including them in a submission; member responses are reflected in the column headed 'Feedback'.

On behalf of our members, IMIA would be pleased to further discuss any of the points raised in this submission with ESMA should ESMA consider this helpful.

Yours sincerely



Irish MiFID Industry Association

Question	Feedback
Q1: Do you believe that guideline 1 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment
Q2: Do you agree with the suggested approach in relation to the compliance function's monitoring obligations? Please also state the reasons for your answer.	No comment
Q3: Do you believe that further guidance is needed to clarify the compliance function's monitoring obligations?	It would be helpful for the supporting Guidelines to refer to the compliance officer being able to request other departments to produce reports with specified content.
Q4: Do you agree with the addition to paragraph 26?	Interviewing clients: This facility is currently available to firms should they consider it appropriate. Clients do not welcome unsolicited calls from Firms. On this basis, there are concerns that, if by including it in the Guidelines, Supervisors would consider that it be used more frequently than a firm may in the ordinary course of its business. This may lead to Firms 'second guessing' when Supervisors may consider it appropriate leading to an increase in clients contacts and client distress.
Q5: Do you agree with the suggested general content of the compliance function reports (paragraph 31 of the guidelines)? Please also state the reasons for your answer.	Concerns that prescription of certain content in the compliance report may lead to duplication of issues where other line departments effectively report on a prescribed issue. Where this is the case the compliance report would be considered to have effectively dealt with the reporting matter by referencing the other relevant report (with or without some comment).

	Such an approach strengthens the concept that compliance, effective compliance reporting and mitigation is a matter for all functions of the firm.
Q6: Do you agree with the suggested content of the compliance function reports in relation to product governance arrangements (paragraph 32 of the guidelines)? Please also state the reasons for your answer.	Where a firm has an Investment Committee, that committee should provide the relevant reports to the Board and Senior Management. Compliance's role should be focused on monitoring activities including the content of these reports. Such an approach strengthens the concept that compliance, effective compliance reporting and mitigation is a matter for all functions of the firm.
Q7: Do you agree that the information that should be included in the compliance function reports should be proportional to the complexity and level of risks of the financial instruments manufactured and/or distributed by the firm? Do you believe that additional criteria should be taken into account? Please also state the reasons for your answer.	Yes Yes. See responses above regarding the promotion of the approach that compliance, effective compliance reporting and mitigation is a matter for all functions of the firm.
Q8: Do you believe that further guidance is needed to clarify how firms should address the potential conflicts arising from the combination of the complaints management function with the compliance function? What practical solution could be envisaged?	Segregation of duties can be difficult to achieve for smaller firms. Concerns that prescription in this area may have the unintended consequence of requiring the recruitment of headcount without sufficient work to support this.
Q9: Do you believe that further topics/areas should be included in the compliance function reports?	Supportive of some prescription of the content of compliance reports. This however needs to balance the needs of effective reporting and promotion

	of compliance being embedded in a Firm. In addition, there are concerns that over prescription may result in a requirement to produce extensive reports with little meaningful content. This can deflect from the critical issues which the board and Senior Management should be focusing on.
Q10: Do you agree with the approach taken for the review of guideline 4? Do you believe that guideline 4 should be amended and/or supplemented further? Please also state the reasons for your answer.	No comment
Q11: Do you believe that guideline 5 should be amended and/or supplemented further? Please also state the reasons for your answer.	No comment
Q12: Do you agree with the creation of a new guideline solely focused on the skills, knowledge, expertise and authority of the compliance function? Please also state the reasons for your answer.	This Guideline helps the independence and competence of the compliance function. It is mindful however that the drafting should avoid implying that a role holder must be exceptionally experienced and competent to fulfil a role on commencement; that approach would stifle career movement, particularly between different types of MiFID Firm and lead to 'pigeonholing' of compliance professionals.
Q13: Do you agree with the additions to guideline 6 (formerly part of guideline 5)?	At paragraph 33 of its Overview to the changes ESMA states it "believes that the compliance officer should be irreproachable in terms of ethics and personal integrity." That this specific standard has not explicitly made its way into Guideline 6 is welcomed. There are concerns that such a standard would dissuade many competent, professional and ethical individuals from considering compliance as a profession as even a misdemeanour at an early age could result in termination of their career. There are also concerns that such a standard

	would not allow for compliance staff and Compliance Officers to learn from mistakes.
Q14: Do you believe that guideline 7 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment
Q15: Do you believe that guideline 8 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment
Q16: Do you believe that guideline 9 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment
Q17: Do you agree that, subject to the proportionality principle, a firm should consider establishing and maintaining a core team of compliance staff whose sole area of responsibility is MiFID II? Please also state the reasons for your answer.	No comment
Q18: Do you believe that guideline 10 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment
Q19: Do you agree with the amendments made to guideline 11? Please also state the reasons for your answer.	No comment
Q20: Do you believe that guideline 11 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment

Q21: Do you agree with the amendments made to guideline 12? Please also state the reasons for your answer.	No comment
Q22: Do you believe that guideline 12 should be further amended and/or supplemented? Please also state the reasons for your answer.	No comment