

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

29 July 2014

Reply to Consultation Paper on MiFID II / MiFIR (ESMA/2014/549)

Dear Madams/Sirs,

CFA Institute appreciates the opportunity to respond to Consultation Paper ESMA/2014/549 following the request of the European Commission to ESMA seeking technical advice regarding the sections of MiFID II and MiFIR which shall be implemented by means of delegated acts.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 120,000 members in 139 countries and territories, including 115,000 Chartered Financial Analyst charterholders, and 139 member societies.

By reason of the technical input sought by ESMA, CFA Institute has responded to selected sections of the consultation paper, in relation to the topics of (a) investor protection, and (b) requirements applying on and to trading venues, as regards SME growth markets.

On this same date, CFA Institute also responded to Discussion Paper ESMA/2014/548, seeking input for the sections of MiFID II and MiFIR that will be implemented by means of technical standards.

Our responses to the Consultation Paper are set-out in the attached ESMA response form.

Yours faithfully,



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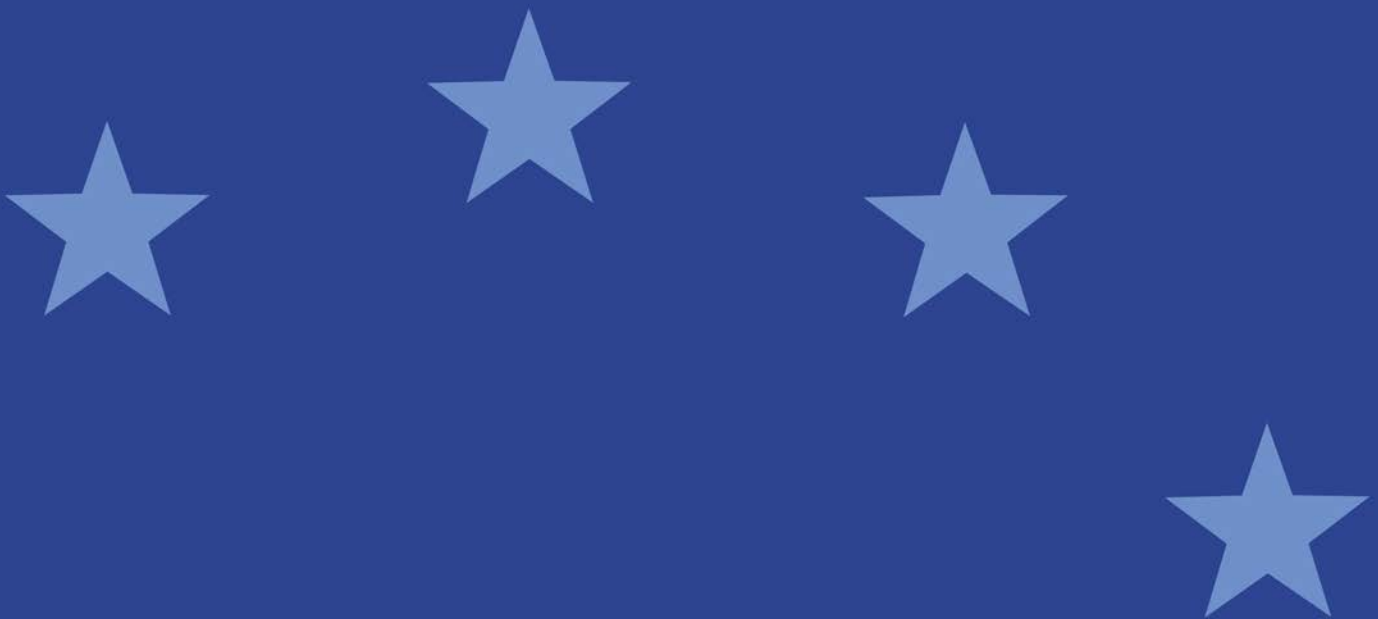


European Securities and
Markets Authority



CFA Institute

Reply form for the ESMA MiFID II/MiFIR Consultation Paper



22 May 2014



European Securities and
Markets Authority

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](#)).

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:

- i. use this form and send your responses in Word format;
- ii. 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
- iii. 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:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. 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 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 under the heading ‘Disclaimer’.

1. Overview

2. Investor protection

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

Q1: 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>

2.2. Investment advice and the use of distribution channels

Q2: 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>
CFA Institute agrees with ESMA that, as a matter of fact, a personal recommendation can be delivered through the use of distribution channels, including the internet. CFA Institute considers that the protections afforded by MiFID to clients should apply irrespective of the distribution channel though with products or services are provided. CFA Institute therefore supports the proposal to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors.
<ESMA_QUESTION_2>

2.3. Compliance function

Q3: 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>

Q4: 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>

2.4. Complaints-handling

Q5: 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>

CFA Institute would like to point ESMA to its forthcoming report on “Redress in Retail Investment Markets - International perspectives and best practices” which will be publicly released in September 2014. This report contains an in-depth analysis of the mechanisms for internal complaint-handling and external schemes for redress, including the use of out-of-court alternative dispute resolution (ADR) in instances of mass detriment to investors arising from suspected misselling. The report puts forward a series of policy recommendations to foster effective mechanisms for redress, investor trust and participation in markets.

<ESMA_QUESTION_5>

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

Q6: 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>

Q7: 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>

2.6. Recording of telephone conversations and electronic communications

Q8: 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>

Q9: 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>

Q10: 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>

Q11: Should clients be required to sign these minutes or notes?

<ESMA_QUESTION_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_11>

Q12: 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>

Q13: 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>

2.7. Product governance

Q14: 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>
CFA Institute considers that the proposed distributor requirements should have the broadest possible remit, applying to all financial instruments that may be sold to a non-professional client for investment purposes. However, these requirements should be applied in a manner proportional to the level of complexity of those financial instruments and the sophistication of the target market.
<ESMA_QUESTION_14>

Q15: 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>
CFA Institute believes that, where distribution targets non-professional clients, MiFID firms should refrain from distributing products about which they lack sufficient information. The proposed requirement for a written arrangement may facilitate MiFID firms obtaining the relevant product information from non-MiFID firms and third country firms.
<ESMA_QUESTION_15>

Q16: 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>

CFA Institute believes that the proposed product governance framework is unlikely to work in practice without an efficient exchange of information between manufacturers and distributors. Distributors should therefore have an obligation to report, proportional to the scale and complexity of their business. However, manufacturers should also have a duty of cooperation to facilitate the reporting from distributors.

In considering how to best to instrument this exchange of information, CFA Institute would encourage ESMA and NCAs to consider the level of concentration of manufacturing and distribution in each market. For instance, where manufacturing is relatively more concentrated than distribution, manufacturers will be best positioned to build the operational tools needed to channel reporting flows.

<ESMA_QUESTION_16>

Q17: 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>

CFA Institute believes that manufacturers should be required to take proportionate actions where they become aware of the sale of products outside the target market. Such actions should comprise warning the distributor/s and NCA/s affected, and clients, where their identity is known by the manufacturers. Clients should be informed about the complaint and redress options available to them. Where a distributor refuses to adhere to the distribution policy and/or take remedial measures, manufacturers should stop the distribution of such products through this distributor, where feasible from an operational perspective. Where the cessation of distribution cannot be implemented unilaterally by the manufacturers, national authorities should provide legal actions that enable manufacturers to request such cessation.

<ESMA_QUESTION_17>

Q18: 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>

CFA Institute believes that the actions that regulation may require from distributors should depend on whether the material event is attributable only to changes in market circumstances or also to failures in the product governance processes by manufacturers and/or distributors. Where the event is due to a change in market circumstances, distributors should contact the relevant clients where an ongoing assessment of suitability is provided. Where the event is due to a failure of the product governance process, ESMA should consider how the relevant information, including about complaint and redress mechanisms, should arrive to clients.

<ESMA_QUESTION_18>

Q19: 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>

CFA Institute considers that, for their most part, the requirements proposed by ESMA are clear from a substantial perspective. In other words, the processes that both manufacturers and distributors need to put in place and the objectives pursued by those processes are, for their most part, sufficiently clear. However, CFA Institute believes, that the draft proposal by ESMA fails to clarify the precise allocation of responsibilities, between manufacturers and distributors, in cases of failures. CFA Institute believes that more clarification is needed regarding the actions that manufacturers and distributors should take in the event of failures in the proposed processes of product governance (actions vis-à-vis each other, clients,

prospective clients and NCAs). CFA Institute would also invite ESMA to clarify who bears the ultimate responsibility in each instance, whether the distributor or the manufacturer, in order to facilitate appropriate enforcement by NCAs and client redress, where warranted.

<ESMA_QUESTION_19>

Q20: 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>

CFA Institute considers that firms should also consider in point 10 (charging structures) the link between sale incentives (some of which may not be in the best interest of investors, such as volume-based incentives, frequently conducive to instances of misselling) and charges for investors. More broadly, CFA Institute would encourage ESMA and the European Commission to privilege general requirements, over detailed provisions, in binding legislation and to later develop non-binding guidelines and examples. CFA Institute warns against the risk of transforming product governance into a “box-ticking” exercise.

<ESMA_QUESTION_20>

Q21: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_21>

2.8. Safeguarding of client assets

Q22: Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?

<ESMA_QUESTION_22>

CFA Institute believes that asset segregation and oversight are defining elements of portfolio management and related investment services, vis-a-vis some forms of banking and life insurance. Segregation and oversight contribute both to investor protection and financial stability. CFA Institute therefore favours the approach suggested by ESMA to increase the attention paid by firms to the safeguarding of client assets.

<ESMA_QUESTION_22>

Q23: 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>

Q24: 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>

CFA Institute believes that title transfer collateral arrangements (TTCA) should only be entered into where such an arrangement is in the best interest of the client and expressly consented by the client. However,

some clients (in particular most retail clients) are unlikely to be able to understand the risks in TTCAs and, therefore, need additional protection from the inappropriate use of TTCAs, as proposed by ESMA.

<ESMA_QUESTION_24>

Q25: 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>

CFA Institute considers that any form of regulatory arbitrage, that leads to an increase in the risks borne by clients or investors that is either (a) not well communicated, understood and accepted by those investors or (b) leads to a reduction in the level of investor protection mandated by the law, should be avoided. CFA Institute therefore welcomes the approach of ESMA, as far as it clarifies the obligations for firms not to use TTCAs in a manner that would effectively negate the protections required under MiFID.

<ESMA_QUESTION_25>

Q26: 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>

Q27: 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>

Q28: 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>

Q29: 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>

CFA Institute believes that the quality and diversification of collateral is important to ensure that such transactions do not result in a lower level of protection for investors, as far as not well communicated, understood and expressly accepted by those investors.

<ESMA_QUESTION_29>

Q30: 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>

CFA Institute believes that retail clients should always benefit from the measures proposed. As for professional clients, CFA Institute considers that they should be allowed to opt-into those protections, where

they lack sufficient understanding or capabilities to monitor collateral or where required by regulation, for instance, where the professional investor is acting on behalf of an end beneficiary or investor.

<ESMA_QUESTION_30>

Q31: 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>

Q32: 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>

CFA Institute believes that all clients, including professional clients, should be well informed, understand any risks and give their explicit consent to any transaction that may alter the risk profile of the service or product purchased by the client, including any transaction linked to the use of the financial instruments of the client. It should be possible for the client to consent to a series of transactions, as far as any discretion granted on the firm, to conduct such transactions, is framed with reference to meaningful parameters, in a manner that allows the client to comprehend the maximum potential risk incurred.

<ESMA_QUESTION_32>

Q33: 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>

Q34: 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>

CFA Institute considers that diversification of client funds is an element of good practice that should by all means be encouraged, even if possibly not mandated in all circumstances. CFA Institute would therefore encourage ESMA to consider the costs and benefits of mandating such diversification. However, CFA Institute agrees on the principle of intra-group deposit limits to manage the potential conflicts of interest between firms and their parent undertakings (see response to question 36).

<ESMA_QUESTION_34>

Q35: 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>

Q36: 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>

CFA Institute agrees on the principle of intra-group deposit limits to manage the potential conflicts of interest between firms and their parent undertakings (see response to question 35). CFA Institute believes that this limit should operate both in respect of banks deposits and cash-equivalents, including money market funds. CFA Institute would also invite ESMA to consider the potential introduction of limits regarding the ability of firms to place client funds in money market funds with a stable net asset value.

<ESMA_QUESTION_36>

Q37: 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>

CFA Institute would favour the introduction of strict limits. While other safeguards may be appropriate, CFA Institute believes that they should apply only cumulatively.

<ESMA_QUESTION_37>

Q38: 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>

Q39: 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>

Q40: 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>

Q41: 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>

Q42: 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>

CFA Institute considers that the safeguarding of client assets should comprise their full un-encumbrance, including as regards any liens with third parties to recover costs that do not relate to those clients. Where the law of a particular jurisdiction requires the firm to enter into such liens, CFA Institute believes that clients should be informed of the potential consequences of such liens. The risk of any such liens should be well communicated, understood and expressly accepted by clients; before a client would enter into any service, product or transaction where such liens may apply.

<ESMA_QUESTION_42>

Q43: 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>

CFA Institute favours the prominent disclosure of any relevant risks to clients, including from liens. CFA Institute welcomes the use of standardised warnings, as far as they draw attention to relevant risks and facilitate comparison. However, CFA Institute believes that standardised warnings should not substitute detailed disclosure, following a “layered approach” where information is given in subsequent layers (from summary to detail). In addition, CFA Institute would recommend ESMA to consider how any proposed warning may interact with other disclosures already prescribed by regulation.

<ESMA_QUESTION_43>

Q44: 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>

Q45: 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>

CFA Institute believes that, in the interest of both investor protection and financial stability, any security interests and other encumbrances over client assets should be recorded by firms on behalf of clients. CFA Institute believes that centralised registers of such interests are the most effective means to account for such interests and encumbrances. Moreover, CFA Institute believes that, as a matter of principle, firms should not place security interests or other encumbrances on client assets, where firms are unable to record those or anticipate the risks from those (which should be communicated, understood and accepted by clients).

<ESMA_QUESTION_45>

Q46: 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>

CFA Institute believes that, in order to ensure the same level of protection for investors within the European Union single market, ‘other equivalent measures’ to differently titled accounts should only be available in third country jurisdictions where market practices or legal requirements make this necessary.

<ESMA_QUESTION_46>

Q47: 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>

Q48: 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>

Q49: 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>
CFA Institute believes that the integrity of the segregation of client financial instruments and funds should be warranted at all times. CFA Institute also believes that the use of one client’s financial instruments to settle the transactions of another client should not be possible unless the first client was well informed, understood the potential risks and consented to such use.
<ESMA_QUESTION_49>

Q50: 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>

Q51: 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>
CFA Institute believes that, in the interest of investor protection and financial stability, in particular in case of resolution of a MiFID firm, the accessibility and quality of the information regarding the firm’s operations and clients’ assets is of the utmost importance for the orderly resolution of the firm. CFA Institute therefore welcomes the requirements proposed by ESMA regarding the holding of relevant information in an easily accessible manner. CFA Institute believes that markets would benefit from ESMA guidance on best practices and supervisory reviews, at a later stage in time, as regards compliance.
<ESMA_QUESTION_51>

Q52: 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>
CFA Institute believes that the list of items put forward by ESMA well captures the operational aspects relevant to the resolution of a firm, at a high level. As far as this requirement may represent a novelty in some markets and jurisdictions, CFA Institute would encourage ESMA to issue guidance on best practices and NCAs to conduct reviews, at a later stage in time, as regards compliance with these requirements.
<ESMA_QUESTION_52>

Q53: 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>

2.9. Conflicts of interest

Q54: 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>
CFA Institute welcomes the approach whereby firms should avoid placing over-reliance on the disclosure of conflicts of interests to clients. The focus should be, instead, on adopting the necessary measures to eliminate and otherwise manage such conflicts. Moreover, the management of conflicts of interest cannot be deemed to be static. CFA Institute therefore supports the proposal from ESMA and considers that periodically reviewing the measures undertaken to manage conflicts of interest should contribute positively to firms taking supplementary measures to improve the management of such conflicts, when needed.
<ESMA_QUESTION_54>

Q55: 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>
CFA Institute considers that the situations identified in Article 21 of Commission Directive 2006/73/EC are sufficiently significant and broad to capture most, possibly all, instances of conflicts of interest with potentially adverse consequences for clients. By way of improvement, CFA Institute could suggest ESMA to consider the merit of specifying that such situations may arise from the concurrence of commercial interests but also from the concurrence of other interests, including public interests, which might also introduce incentives for the firms to act against the best interest of their clients. For instance, CFA Institute observes that prudential regulation, while pursuing a public interest in financial stability, sometimes introduces perverse incentives for firms, such as incentives to offload risks from balance sheets.
<ESMA_QUESTION_55>

Q56: 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>
CFA Institute supports all efforts to improve the distinction between research and marketing materials. CFA Institute would therefore encourage ESMA to consider the merit of better clarifying the link between Articles 24 and 25 of Directive 2006/73/EC by expressly providing that no materials may be labelled as "research" if not elaborated in compliance with the organisational arrangements detailed in Article 25. More broadly, regarding research, CFA Institute would invite ESMA to consider the recent publication by CFA UK (the CFA Society of the United Kingdom) entitled "The Market for Research", available at https://secure.cfauk.org/assets/3372/The_Market_for_Research_CFA_UK_Position_Paper.pdf.
<ESMA_QUESTION_56>

Q57: 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>

CFA Institute supports all efforts to preserve the objectivity and independence of investment research and manage the potential conflicts of interest that may affect the integrity of such research. CFA Institute would thus invite ESMA to consider: (a) organisational arrangements regarding potential positions held, PREVIOUSLY *[emphasis added]* to the release of a given piece of investment research, by financial analysts and other relevant persons, on their own behalf or on behalf of the investment firm or a client; and (b) organisational arrangements regarding other potential business relationships of the firm or analysts with the issuer to which the investment research relates (for instance, where the firm provides investment banking services to the issuer or where any person within the firm serves on the board of the issuer).

<ESMA_QUESTION_57>

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

Q58: Are there additional details or requirements you believe should be included?

<ESMA_QUESTION_58>

CFA Institute supports all efforts to increase transparency in underwriting and placing practices, in the interest of end users and investors. CFA Institute believes that the technical advice proposed by ESMA, regarding articles 16.3 and 23 of MiFID II, would provide sufficient transparency on the underwriting and placing process vis-à-vis the issuer client and is adequate to ensure the fair treatment to the issuer client.

Regarding point 14 in section 2.10 of the CP, CFA Institute would like to note that it is common practice for investment firms to issue corporate loans in conjunction with additional corporate finance transactions undertaken for the same client. CFA Institute observes that lending represents a high capital charge on the balance sheet of investment firms. Thus, the potential for other “fee business” (that is, corporate finance transactions such as the issuance of equity or bonds) could be one of the reasons why the firm agreed to a corporate loan in the first place. Since firms might accept less profitable transactions in order to build relationships, any attempt to separate the correlation between the original loan and subsequent market takeout might hinder lending. In the light of the difficult market conditions for SMEs, CFA Institute would thus invite ESMA to further consider the potential impact of the proposed provisions.

<ESMA_QUESTION_58>

Q59: 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>

CFA Institute observes that hedging strategies are not typically part of the responsibilities of the corporate finance section of investment firms. Instead, these strategies are typically the responsibility of the trading desks and the asset-liability management (ALM) sections of investment firms, when they offset the risk on the share of the underwriting borne by each firm. CFA Institute notes that, to avoid conflicts of interests, “Chinese walls” separate the operation of these sections within each investment firm. These “Chinese walls”, as far as they are effective in practice, make the discussion of hedging strategies irrelevant to the negotiations between the issuer and the firm regarding the underwriting and placement transaction. Instead, the primary concern of the issuer client tends to be the composition of the underwriting group and ensuring that the placing is done in accordance with the agreed strategy. CFA Institute notes the inability for issuer clients to check the quality and efficacy of “Chinese walls”, which is ultimately a matter that can only be ensured by active supervision.

<ESMA_QUESTION_59>

Q60: Have you already put in place organisational arrangements that comply with these requirements?

<ESMA_QUESTION_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_60>

Q61: How would you need to change your processes to meet the requirements?

<ESMA_QUESTION_61>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_61>

Q62: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_62>

2.11. Remuneration

Q63: Do you agree with the definition of the scope of the requirements as proposed? If not, why not?

<ESMA_QUESTION_63>

CFA Institute supports all efforts conducive to the better alignment of remuneration policies with the interests of clients. The CFA Institute Code of Ethics and Standards of Professional Conduct requires CFA Institute members to “place the integrity of the investment profession and the interests of clients above their own”. CFA Institute therefore welcomes the proposals from ESMA to ensure that remuneration policies uphold this principle and do not create incentives that may lead relevant persons to favour their own interests or the firm’s interests to the potential detriment of client interests.

<ESMA_QUESTION_63>

Q64: Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?

<ESMA_QUESTION_64>

As per our response to question 63, CFA Institute welcomes all efforts conducive to the better alignment of remuneration policies with the interests of clients. CFA Institute believes that firms should structure any variable remuneration in a manner that fully upholds client interest. In other words, firms should avoid

any incentive that would promote a commercial interest in a manner that would jeopardise a client interest. CFA Institute therefore broadly welcomes the approach proposed by ESMA as regards variable remuneration.

<ESMA_QUESTION_64>

2.12. Fair, clear and not misleading information

Q65: 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>

CFA Institute agrees with ESMA that the format of any disclosure should be such that it does not promote the potential benefits from a service or product without explaining, in an equally prominent manner, the risks and costs linked to the service or product. CFA Institute therefore welcomes the proposal from ESMA to require consistent presentation in the same language and in the same font size of both potential benefits and risks. As regards pre-contractual disclosure, more broadly, CFA Institute would like to draw the attention of ESMA to the recent report on “Investor Disclosure Considerations for a Key Information Document” by CFA Institute (available at <http://www.cfapubs.org/toc/ccb/2013/2013/10>).

<ESMA_QUESTION_65>

Q66: 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>

CFA Institute supports all efforts to make disclosure clearer and more meaningful for clients, for instance by means of plain language, practical examples and visual illustrations that prove helpful to clients in understanding the impact of market conditions, costs, market risks and other risks on performance. CFA Institute therefore welcomes the proposal from ESMA to use multiple performance scenarios in order to better convey to investors the existence of market risks and their potential impact on performance.

<ESMA_QUESTION_66>

Q67: 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>

CFA Institute believes that, as a matter of principle, all clients, including professional clients, should receive full disclosure of all relevant information in a manner that is fair, clear and not misleading. CFA Institute believes that the principles put forward by ESMA are of sufficient high level to be applied with respect to both retail and professional investors. More broadly, CFA Institute is conscious of the need to mitigate information overload and help clients prioritise information. At the same time, summary information can be so concise that it does not, on its own, enable sufficient understanding. CFA Institute therefore advocates a “layered approach” where information is provided in successive layers (cross-referenced documents or other instruments, such as web pages) at an increasing level of depth.

<ESMA_QUESTION_67>

2.13. Information to clients about investment advice and financial instruments

Q68: 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>

CFA Institute agrees with ESMA that clients should be appropriately informed regarding the services proposed by each firm. Namely, firms should inform clients as to whether the firm is proposing an “independent” service of financial advice and whether the firm would perform a “broad” or “restricted” analysis of the market, in accordance with the meaning attributed to the terms “independent”, “broad” and “restricted” by the MiFID II directive. CFA Institute therefore fully agrees with the objective of the proposals of ESMA but would like to warn that less sophisticated clients may nevertheless have difficulties to understand the differences between the advice services available in the market, as well as the potential benefits and drawbacks of each of those services, against the specific circumstances of each client. CFA Institute would therefore urge information about the characteristics of the advice service proposed to be well contextualised. We would also invite ESMA to consider the merits of a standard contextual information sheet that would explain in general terms what investors should consider when choosing an advice service.

<ESMA_QUESTION_68>

Q69: Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?

<ESMA_QUESTION_69>

CFA Institute supports all efforts to improve the coverage and quality of disclosure of information to clients and therefore welcomes the proposal from ESMA to further specify information regarding functioning and performance, certain risks, the components of financial instruments and guarantees. However, we would caution against information overload, in particular for retail investors, and invite ESMA to consider the importance of prioritising information. Where information is provided in a written format, CFA Institute invites ESMA to consider the “layered approach” mentioned in our response to question 67.

<ESMA_QUESTION_69>

Q70: 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>

CFA Institute does not immediately see any additional elements of disclosure that would warrant specific attention in regulation at this stage. However, CFA Institute anticipates that novel forms of risk and/or intermediation are likely to raise questions regarding the quality of disclosure to investors in the future. CFA Institute therefore invites ESMA and the European Commission to consider which regulatory and/or supervisory techniques should be put in place in order to allow ESMA and NCAs to respond swiftly to such phenomena by updating regulatory provisions and/or supervisory approaches as needed.

<ESMA_QUESTION_70>

2.14. Information to clients on costs and charges

Q71: 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>

CFA Institute supports all efforts to (a) increase the comprehensiveness and accuracy of cost disclosures to clients, (b) facilitate a higher level of understanding among investors regarding the level and sources of costs, (c) illustrate the impact of costs on performance — including the cumulative impact of costs on performance, in particular for longer-term investment horizons, (d) facilitate comparison of costs across substitutable products and services, and (e) improve the formats of disclosure.

CFA Institute believes that all clients, including professional clients, should receive full disclosure on costs. In particular, within the professional space, full cost disclosure is of the utmost relevance to the operations of life insurers and pension funds — since costs, at any point in the value chain, impact performance for end beneficiaries and investors. CFA Institute is a strong advocate of improving cost reporting so that all costs are ultimately accounted for, instead of misrepresented as lower performance. Moreover, due attention should be paid to the operational capabilities required to improve cost reporting.

CFA Institute would like to draw the attention of ESMA to the recent report on “Investor Disclosure Considerations for a Key Information Document” (<http://www.cfapubs.org/toc/ccb/2013/2013/10>).

<ESMA_QUESTION_71>

Q72: Do you agree with the scope of the point of sale information requirements?

<ESMA_QUESTION_72>

CFA Institute agrees with ESMA that point of sale disclosure should apply to firms when recommending or marketing a financial instrument or when providing any service where the firm is required by Union legislation to provide the client with a key investor information document (KIID) or a key information document (KID) in relation, respectively, to undertakings for collective investments in transferable securities (UCITS) and packaged retail and insurance-based investment products (PRIIPS).

<ESMA_QUESTION_72>

Q73: 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>

CFA Institute considers that ex-post information should be offered to investors by distributors, wherever the distributor has established a continuing relationship with the client. However, CFA Institute would encourage ESMA, the Joint Committee of the ESAs and the European Commission to evaluate the adequacy and consistency of the ongoing disclosure obligations imposed by Union legislation on product manufacturers — in particular the obligations imposed by Union legislation on investment, saving, pension and life-insurance products characterised by long-term accumulation and/or de-accumulation horizons.

<ESMA_QUESTION_73>

Q74: 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>

CFA Institute agrees with the proposed costs and charges to be disclosed to clients. CFA Institute would invite ESMA to assess, periodically after the implementation of the MiFID II directive, the extent to which the categories proposed cover all relevant costs and whether firms are reporting costs appropriately. CFA Institute also invites ESMA to consider the relevant operational capabilities which the industry may require to advance towards full cost reporting, since much of the success of the proposed rules will depend on the industry effectively building such operational capabilities.

<ESMA_QUESTION_74>

Q75: 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>

CFA Institute understands that ex-ante cost disclosure may not always reflect with full accuracy the actual costs that will be incurred by each individual client in the future. Ex-post disclosure should unveil any differences between the level of costs reported ex-ante and actual costs. CFA Institute agrees with the principle that ex-ante information at the point of sale may be provided on a generic basis, as far as appropriate checks are put in place, as suggested by ESMA, to ensure that ex-post data on actual costs is reported to clients and quickly filtered down to generic ex-ante information at the point of sale.

<ESMA_QUESTION_75>

Q76: Do you have any other comments on the methodology for calculating the point of sale figures?

<ESMA_QUESTION_76>

CFA Institute would like to draw the attention of ESMA to the recent report on “Investor Disclosure Considerations for a Key Information Document” (<http://www.cfapubs.org/toc/ccb/2013/2013/10>).

<ESMA_QUESTION_76>

Q77: Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?

<ESMA_QUESTION_77>

CFA Institute supports the illustration of the cumulative impact of costs and charges, in particular for any financial product or service that features a long-term accumulation and/or de-accumulation horizon (see response to question number 71). CFA Institute therefore agrees with the requirement for firms to produce graphical illustrations, as proposed by ESMA. However, CFA Institute believes that such graphical representations should be accompanied by tabular information indicating the total costs and their impact of total returns, both in monetary terms (nominally and corrected for the value of money in time) and in relative terms over the life of the investment. CFA Institute also invites the ESAs and the European Commission to ensure that equivalent requirements apply to saving, pension and life-insurance products.

<ESMA_QUESTION_77>

Q78: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_78>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_78>

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

Q79: 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>

CFA Institute agrees with the list of minor non-monetary inducements that would be considered acceptable for firms providing advice services under the denomination “independent”. As far as advice services labelled “independent” and portfolio management services are prohibited from retaining monetary inducements, CFA Institute agrees with ESMA that non-monetary inducements should only be permitted where they would not generate a potential detriment to clients. The use of an exhaustive list should help to increase the level of consistency in the application of the Directive and limit the potential for arbitrage. At the same time, such list should be periodically updated to avoid constraining legitimate practices.

<ESMA_QUESTION_79>

Q80: 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>

CFA Institute supports the disclosure of monetary and non-monetary inducements to clients. However, CFA Institute would like to warn against the risk of information overload. In our view, disclosure should help clients understand the weight of inducements on the total costs and fees paid for a product or service. In addition, disclosure should also inform clients of the potentially adverse consequences that some forms of inducements may have on the ability of the firm to pursue the best interest of its clients. The requirements proposed by ESMA regarding ex-ante and ex-post disclosure appear to fulfil these two principles.

<ESMA_QUESTION_80>

Q81: 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>

CFA Institute agrees on the principle that inducements should only be allowed if they are structured in a manner that does not introduce incentives for firms not to act in the best interests of its clients. CFA Institute welcomes the proposal from ESMA to further specify the meaning of “quality enhancement” — a concept that was already present in Commission Directive 2006/73/EC. However, CFA Institute considers that achieving significant reductions in the recurrence of client detriment (arising from inadequate incentives in inducements and remuneration) requires, primarily, more resources dedicated to supervision and effective supervisory approaches, rather than more detailed regulation.

<ESMA_QUESTION_81>

Q82: 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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_82>

2.16. Investment advice on independent basis

Q83: 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>

CFA Institute agrees with the proposal from ESMA that a diversified selection of financial instruments should extend, proportionately, to instruments issued by third parties. We also agree with ESMA that any comparison of instruments should consider aspects such as risks, costs and complexity. CFA Institute supports all efforts to raise the quality and availability of investment advice, with a level of sophistication proportional to the needs of each target market. CFA Institute also supports all efforts to promote fair competition and open architectures. We therefore invite ESMA to consider, after the implementation of MiFID II, the extent to which the Directive might have helped to increase the quality and availability of advice across market segments, and promoted more competition, innovation and open architectures.

<ESMA_QUESTION_83>

Q84: 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>

CFA Institute supports the proposals from ESMA as regards the provision of information to clients and the set-up of internal procedures and controls. However, CFA Institute recommends ESMA to reconsider the proposed requirements to allocate different staff and separate the provision of “independent” and “non-independent” services. CFA Institute considers that the obligation to “accept and not retain third party payments” (section 2.15 of the CP) would eliminate most of the risks arising from the provision of both services by the same firm. CFA Institute fears that separation would not be proportional, in particular for small firms, and could have a negative effect both on competition and on the development of the market for “independent” advice, thereby reducing the potential availability of this service to clients. As an alternative, CFA Institute proposes ESMA to consider the introduction of a standard contextual information sheet that would explain to investors the differences between “independent” and “non-independent” advice and the elements to consider when choosing an advice service (see our response to question 68).

<ESMA_QUESTION_84>

Q85: 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>

Please see our response to question 84. CFA Institute fears that separation would not be proportional, in particular for small firms, and could have a negative effect both on competition and on the development of the market for “independent” advice, thereby reducing the potential availability of this service to clients.

<ESMA_QUESTION_85>

2.17. Suitability

Q86: 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>

CFA Institute welcomes the proposal to strengthen the suitability test and in particular to introduce the consideration of elements such as cost and complexity. CFA Institute observes that previous formulation of the suitability test was constructed to operate mainly as a control against the misselling of financial instruments, instead of proactively promoting the best possible personal recommendation for each client, within the selection of financial instruments available from the given distributor or adviser. CFA Institute welcomes the change in approach proposed by ESMA. CFA Institute therefore agrees with the proposals of ESMA, including the obligation to consider total costs and benefits in cases of switching.

<ESMA_QUESTION_86>

Q87: 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>

CFA Institute considers that the proposals of ESMA regarding the suitability test are sufficient to address the main problem regarding the previous formulation of the suitability test, namely, the lack of explicit consideration of elements such as costs and complexity. As a further improvement, CFA Institute could suggest to require firms, when they recommend an instrument originated by the firm or a tied entity, to explain why this instrument would be more suitable for the client than equivalent or similar instruments originated by third parties, within the selection of instruments available from the firm.

<ESMA_QUESTION_87>

Q88: 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>

CFA Institute supports the contents of the suitability report proposed by ESMA. In our view, the proposed contents would be sufficient to document the existence of a personal recommendation and how the recommendation meets the needs of the individual client. Firms could enrich suitability reports with useful information for clients, such as simulations of performance and costs in different scenarios during the investment horizon of the individual client, guidance regarding the monitoring of the investment over time, additional services available to the client, sources of further information, etc. Some of these contents may be present already in other information provided to the client at the pre-contractual stage.

<ESMA_QUESTION_88>

Q89: 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>

CFA Institute considers that periodic suitability reports should only need to cover changes in the instruments and circumstances of the client and/or request the client for additional information (where the firm has insufficient information on the evolution of the circumstances of the client) (explaining the impact of a change in the personal circumstances of the client on the continuing suitability of the instrument). While periodic suitability reports should not necessarily repeat information which is unchanged from the initial suitability report, they should contain all relevant information for the client to understand any changes or potential changes in the ongoing suitability of the instrument to its/his/her circumstances.

<ESMA_QUESTION_89>

2.18. Appropriateness

Q90: 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>

CFA Institute agrees with ESMA that those instruments which incorporate a trigger that could fundamentally alter their nature (for instance, hybrid instruments) should not be considered non-complex and opened to execution-only sales. CFA Institute also agrees with ESMA that instruments that include implicit or explicit exit charges that render them artificially illiquid should not be deemed non-complex either.

<ESMA_QUESTION_90>

Q91: 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>

CFA Institute considers that complexity, while being an objective concept, is perceived differently by each investor depending on his or her level of sophistication. CFA Institute therefore believes that, as a matter of principle, beyond the restrictions imposed by MiFID to the classification of products as non-complex, it should ultimately fall on firms to determine the most appropriate distribution strategy for each target market, taking due account of the level of complexity of the each product and the level of sophistication of each target market, as proposed under the product governance requirements in section 2.7 of this CP.

<ESMA_QUESTION_91>

2.19. Client agreement

Q92: 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>

CFA Institute considers that written agreements can help clarify the rights and expectations of both parties to a contractual relationship. CFA Institute advocates, for instance, written investment mandates, including for portfolio management services. CFA Institute considers that both professional and retail clients should also, as a matter of principle, receive the detail of the conditions of each contract. Retail clients are typically “takers” of standard contractual conditions in contrast with professional clients. CFA Institute believes that retail clients should receive a copy of the general conditions and particular conditions applying to the service or product purchased, for their own records. Retail clients should also be informed of those conditions and have sufficient time to consider those conditions, before concluding the purchase.

<ESMA_QUESTION_92>

Q93: 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>

Please see our response to question 92.

<ESMA_QUESTION_93>

Q94: 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>

Please see our response to question 92. CFA Institute would also like to highlight the relevance of the contractual conditions applicable to the custody and safekeeping of client assets with respect to the obligations imposed by MiFID regarding the safeguarding of client assets (section 2.8 of this CP).

<ESMA_QUESTION_94>



Q95: 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>

Please see our response to question 92.

<ESMA_QUESTION_95>

2.20.

2.21. Reporting to clients

Q96: 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>

CFA Institute considers that, as a matter of principle, regulation should afford a different standard of protection to retail and professional clients. However, in this particular instance, the content of the reports proposed by ESMA for retail clients appears to be broadly appropriate also for professional clients. CFA Institute therefore agrees with the proposal, as regards portfolio management and execution of orders.

<ESMA_QUESTION_96>

Q97: 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>

CFA Institute considers that establishing thresholds for reporting to clients is a useful tool to ensure that relevant information arrives to clients on time, avoiding the potential delays that would typically occur where reporting only takes place at constant intervals. However, CFA Institute would caution that retail clients may not always have sufficient understanding to determine appropriate reporting thresholds.

<ESMA_QUESTION_97>

Q98: 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>

CFA Institute agrees with ESMA that the market value or estimated value of the financial instruments is an essential piece of information for clients. Moreover, CFA Institute has found that several prominent cases of investor detriment in Europe have been linked to the inappropriate reporting of the value of the instruments and their level of liquidity. CFA Institute provides a detailed analysis of one of these cases in the report "Redress in Retail Investment Markets - International perspectives and best practices" which will be publicly released in September 2014. CFA Institute therefore agrees with the proposal of ESMA.

<ESMA_QUESTION_98>

Q99: 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>

CFA Institute supports all efforts to improve the quality of reporting to clients, including those aimed at mitigating the potential for strategic behaviours, such as timing transactions with reporting periods. CFA

Institute therefore supports the disclosure of the level of financial instruments subject to TTCA not only at the time of reporting but also over the relevant reporting time, with reference to the average and maximum share of assets subject to TTCA and duration of TTCAs during the reporting period.

<ESMA_QUESTION_99>

Q100: What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?

<ESMA_QUESTION_100>

CFA Institute would encourage ESMA, the Joint Committee of the ESAs and the European Commission to consider more broadly the consistency and appropriateness of existing reporting obligations and disclosure requirements for retail clients, across all relevant financial products and services, including investment products, saving products, life-insurance products and pension products and schemes.

<ESMA_QUESTION_100>

2.22. Best execution

Q101: 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>

Q102: 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>

2.23. Client order-handling

Q103: 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>

2.24. Transactions executed with eligible counterparties

Q104: 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>

CFA Institute agrees with the proposal by ESMA to eliminate the possibility for “professional clients on request” to be treated as eligible counterparties since such clients are unlikely to have the level of operational capabilities, knowledge and experience that would warrant such treatment. More broadly, CFA Institute would encourage ESMA to consider the appropriateness of allowing professional clients to be treated as eligible counterparties where those professional clients are acting on behalf of retail investors, in particular as regards best execution and client order handling. By way of illustration, CFA Institute notes the requirements imposed on UCITS managers to secure best execution (Article 25, Directive 2010/43/EU). CFA Institute believes that the originators of all packaged retail investment products (including life insurance and pensions) should be subject to equivalent obligations in this respect.

<ESMA_QUESTION_104>

Q105: 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>

Q106: 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>

2.25. Product intervention

Q107: Do you agree with the criteria proposed?

<ESMA_QUESTION_107>

CFA Institute considers that the criteria proposed by ESMA to assess the need for product intervention are relevant and comprehensive enough to ensure that such intervention will only occur in the circumstances provided by the Directive; where there is a threat to financial stability or a significant concern for consumer protection. CFA Institute welcomes the approach of ESMA whereby product intervention powers constitute a tool of last recourse and the responsibility for sound product origination and distribution practices is placed instead on firms, by means of product governance processes, which, properly applied and supervised, should lead to better outcomes for consumers than product approval and licensing requirements.

<ESMA_QUESTION_107>

Q108: Are there any additional criteria that you would suggest adding?

<ESMA_QUESTION_108>

CFA Institute would recommend ESMA to consider the merit of including, as an additional criterion, the potential impact of bail-in processes, in the context of the resolution of banking institutions. CFA Institute observes that there have already been instances of widespread investor detriment, in relation to hybrid instruments sold by banking institutions to retail investors, which were affected by bail-in conditions in the context of the resolution of those banking institutions. In anticipation that similar instances could occur in the future, CFA Institute would encourage ESMA to cross-check the proposed criteria with the Single Supervisory Mechanism for banks established within the European Central Bank.

<ESMA_QUESTION_108>

3. Transparency

3.1. Liquid market for equity and equity-like instruments

Q109: 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>

Q110: 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>

Q111: 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>

Q112: 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>

Q113: 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>

Q114: 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>

Q115: 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>

Q116: 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>

Q117: 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>

Q118: 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>

Q119: 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>

Q120: 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>

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

Q121: 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>

3.3. The definition of systematic internaliser

Q122: 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>

Q123: 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>

Q124: 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>

Q125: 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>

Q126: 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>

Q127: 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>

Q128: 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>

Q129: 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>

Q130: 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>

Q131: 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>

Q132: 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>

Q133: 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>

Q134: 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>

Q135: 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>

Q136: What thresholds would you consider as adequate for the emission allowance market?

<ESMA_QUESTION_136>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_136>

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

Q137: 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>

3.5. Exceptional market circumstances and conditions for updating quotes

Q138: 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>

3.6. Orders considerably exceeding the norm

Q139: 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>

3.7. Prices falling within a public range close to market conditions

Q140: 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>

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

Q141: 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>

Q142: 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>

4. Data publication

4.1. Access to systematic internalisers' quotes

Q143: 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>

Q144: 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>

Q145: Do you agree with the proposal regarding the means of publication of quotes?

<ESMA_QUESTION_145>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_145>

Q146: 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>

Q147: Is there any other mean of communication that should be considered by ESMA?

<ESMA_QUESTION_147>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_147>

Q148: 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>

Q149: 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>

Q150: 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>

Q151: Do you agree with the requirements to consider that the publication is ‘easily accessible’?

<ESMA_QUESTION_151>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_151>

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

Q152: 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>

Q153: Do you agree with this proposal. If not, what would you suggest?

<ESMA_QUESTION_153>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_153>

4.3. Reasonable commercial basis (RCB)

Q154: 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>

Q155: 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>

Q156: 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>

Q157: What are your 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>

Q158: Which percentage range for a revenue limit would you consider reasonable?

<ESMA_QUESTION_158>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_158>

Q159: 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>

Q160: 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>

Q161: 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>

Q162: 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>

Q163: What are your views on the costs of the different approaches?

<ESMA_QUESTION_163>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_163>

Q164: Is there some other approach you believe would be better? Why?

<ESMA_QUESTION_164>
TYPE YOUR TEXT HERE

<ESMA_QUESTION_164>

Q165: 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>

Q166: If yes, in which circumstances?

<ESMA_QUESTION_166>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_166>

5. Micro-structural issues

5.1. Algorithmic and high frequency trading (HFT)

Q167: Which would be your preferred option? Why?

<ESMA_QUESTION_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_167>

Q168: Can you identify any other advantages or disadvantages of the options put forward?

<ESMA_QUESTION_168>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_168>

Q169: How would you reduce the impact of the disadvantages identified in your preferred option?

<ESMA_QUESTION_169>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_169>

Q170: 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>

Q171: Do you agree with the above assessment? If not, please elaborate.

<ESMA_QUESTION_171>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_171>

5.2. Direct electronic access (DEA)

Q172: 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>

Q173: 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>

Q174: 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>

Q175: 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>

6. Requirements applying on and to trading venues

6.1. SME Growth Markets

Q176: 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>

CFA Institute considers that the proposal of ESMA is a valid implementation of the relevant provision in the Directive. However, CFA Institute considers that issuers with large market capitalisations (in excess of the threshold of €200m established by the MiFID II directive) should be encouraged (and over a certain size be required) to seek ordinary listing in a regulated market or a MTF. CFA Institute notes that, where an issuer reaches a large market capitalisation, it could reasonably be expected to have the capacity to comply with the requirements applicable to issuers ordinarily listed on a regulated market or a MTF.

<ESMA_QUESTION_176>

Q177: 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>

In the interest of investor protection, CFA Institute would support the second option proposed by ESMA (that is, "at least 50% of the issuers admitted to trading on SME-GM were SMEs for a period of at least 180 days in that year"). However, CFA Institute would invite ESMA to consider extending the evaluation period in this second option from 180 days to 240 days or 360 days, given that this requirement will only need to be fulfilled by 50% of the listed issuers, which, in our view, already brings in sufficient flexibility to the definition of an SME-GM.

<ESMA_QUESTION_177>

Q178: Do you agree with the approach described above (in the box Error! Reference source not found.), 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>

In the interest of investor protection and given that only 50% of issuers will be required to comply with the capitalisation threshold of €200m established by Directive, CFA Institute considers that the maximum period of non-compliance with the 50% threshold should be limited to two years and possibly be further shortened. However, CFA Institute considers that, where a SME-GM exceeds this threshold, this situation should not automatically result in the MTF losing its status of SME-GM. Instead, the SME-GM should delist those issuers whose high capitalisation is responsible for the SME-GM exceeding the regulatory threshold, while facilitating the transitioning of those issuers to ordinary listing in a regulated market or MTF.

<ESMA_QUESTION_178>

Q179: 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>

As a matter of principle, CFA Institute supports full disclosure to market participants, since disclosure contributes positively to investor protection and market integrity, including by enabling due diligence

when investing in listed issuers. CFA Institute considers that it is of great importance that investors are afforded full information on the rules applicable to listings in SME-GMs and the way in which market operators administer these markets, including by disclosing if the threshold of 50% has been exceeded in any given year.

<ESMA_QUESTION_179>

Q180: 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>

In the interest of investor protection, CFA Institute considers that for non-equity markets, criteria “a” (“the overall outstanding nominal value of debt securities issued by the issuer does not exceed €200m”) and “b” (“the annual net turnover of the issuer based on the last published annual accounts does not exceed €300m”) should apply cumulatively, in order to ensure that SME-GMs target indeed small and medium enterprises.

<ESMA_QUESTION_180>

Q181: 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>

CFA Institute supports market diversity and the ability of operators to choose their own operating model. However, CFA Institute would encourage ESMA to further specify the minimum processes and controls that any operating model should apply, by referring at least to the end objectives that such processes and controls should pursue. CFA Institute also supports that NCAs are given the power to approve and/or request improvements to the processes and controls proposed by the operators of SME-GMs. Moreover, all such processes and controls should be publicly disclosed, together with meaningful statistics on their application.

In this respect, we would like to call the attention of ESMA to the following research paper commissioned by CFA Institute: “Exchanges and Their Investors: A New Look at Reporting Issues, Fraud, and Other Problems by Exchange”. In this paper, the authors (Douglas J. Cumming and Sofia Johan) consider ample evidence and call for greater transparency requirements for exchanges not only on the individual cases of miss-reporting or fraud but also on aggregate data and disclosures, for instance regarding the number of cases or complaints affecting listed companies. The paper is found at:

<http://dx.doi.org/10.2139/ssrn.1985319>.

<ESMA_QUESTION_181>

Q182: 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>

As per our answer to Q181, CFA Institute supports that NCAs are given the power to approve and/or request improvements to the processes and controls proposed by SME-GM operators. CFA Institute supports market diversity and the ability of operators to choose their own operating model. At the same time, however, CFA Institute would invite ESMA and NCAs to closely cooperate to identify and implement best practices across the European Union, in the interest of fostering the development and integration of capital markets in Europe.

<ESMA_QUESTION_182>

Q183: 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>

CFA Institute agrees with the factors proposed by ESMA but considers that their enunciation is not sufficiently concrete. CFA Institute would therefore invite ESMA to further specify the definition of the factors to which a NCA should have regard when assessing if the regulatory regime of an SME-GM is effective, within its advice to the European Commission regarding the implementation of the MiFID II directive and, otherwise, through supervisory guidelines.
<ESMA_QUESTION_183>

Q184: 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>

CFA Institute agrees with the principles that issuers listed in SME-GM should not be subject to more burdensome requirements than those applicable to issuers ordinarily listed in regulated markets or MTFs. However, CFA Institute considers that the former principle should be understood without prejudice of the potential appropriateness of subjecting SMEs to specific requirements in view of their differential characteristics. In this respect, CFA Institute supports corporate governance requirements aimed at ensuring the ability of management and board to fulfil the responsibilities of a publicly quoted company, in particular vis-à-vis investors.

<ESMA_QUESTION_184>

Q185: 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>

In line with our answer to Q184, CFA Institute considers that specific requirements, inspired by the differential characteristics of SMEs, should work in favour of the integrity of SME-GMs and not run against the principle that SME issuers should not be subject to more burdensome requirements than mature issuers. CFA Institute therefore supports that SME-GM operators introduce and manage, in line with their individual operating models, an appropriateness test of the systems and controls of the issuers, including notably as regards the systems and controls in place to ensure the quality and faithfulness of mandatory disclosures to the market.

<ESMA_QUESTION_185>

Q186: Do you agree with Error! Reference source not found., Error! Reference source not found. or Error! Reference source not found. Error! Reference source not found.?

<ESMA_QUESTION_186>

In the interest of investor protection and fair disclosure to the market, CFA Institute agrees with option "i" ("an SME-GM issuer should be required to disclose whether or not it has sufficient working capital and if not how it proposes to make up for this shortfall").

<ESMA_QUESTION_186>

Q187: 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>

CFA Institute considers that issuers in SME-GM should be required to use recognised financial reporting standards, such as IFRS. CFA Institute notes that the quality of financial disclosures to the market is the basis of sound investment decisions and would contribute positively to establishing and maintaining investor trust on SME issuers. CFA Institute also considers that financial statements should be audited. CFA Institute understands that the application of the principle of proportionality should only be allowed for listed issuers who at least comply with the market capitalisation threshold of € 200m.

<ESMA_QUESTION_187>

Q188: 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>

CFA Institute considers that the content of an admission document should indeed be geared towards providing investors with sufficient information to carry informed due diligence. In addition, the admission document should also contain the necessary information to allow the SME-GM operator to comply with its obligations, as established by the Directive.

<ESMA_QUESTION_188>

Q189: 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>

CFA Institute considers that a 'top down' approach is preferable since it sets information requirements by comparison to the Prospectus Directive, which operates as a benchmark. CFA Institute considers that SME-GM operators should list all information required in a clear manner and explain any deviation from the Prospectus Directive. CFA Institute would encourage that any deviation from the Prospectus Directive would be subject to the test of better targeting the differential characteristics of SME issuers — rather than solely reducing the burden of disclosure with potential detrimental effects for investors and market integrity.

<ESMA_QUESTION_189>

Q190: 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>

CFA Institute supports market diversity and the ability of operators to choose their own operating model. However, CFA Institute would encourage ESMA to further specify the minimum disclosures, by referring at least to the end objectives that such disclosures should pursue. CFA Institute also supports that NCAs are given the power to approve and/or request improvements to the disclosures proposed by SME-GM operators. At the same time, CFA Institute would invite ESMA and NCAs to closely cooperate to identify and implement best practices, in order to foster the development and integration of capital markets in Europe.

<ESMA_QUESTION_190>

Q191: 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>

As per our response to Q189, CFA Institute considers that SME-GM operators should benchmark their disclosure requirements against the ones provided by the Prospectus Directive. SME-GM operators should publicly explain the reasons for any deviation from the Prospectus Directive and NCAs should check that any such deviation is justified by the differential characteristics of SME issuers — rather than being uniquely aimed at reducing the burden of disclosure.

<ESMA_QUESTION_191>

Q192: 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>

CFA Institute would in principle support the proposal that SME-GM operators establish arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete and that the issuer had the systems and processes in place to ensure the quality and faithfulness of this disclosure to the market.

<ESMA_QUESTION_192>

Q193: Do you agree with this initial assessment by ESMA?

<ESMA_QUESTION_193>

CFA Institute would encourage ESMA to give sufficient weight to “maintaining high levels of investor protection to promote investor confidence”. CFA Institute therefore argues for instituting the principle that disclosure requirements should be benchmarked against the rules generally applicable to all issuers and that any deviation is duly justified by reason of the differential characteristics of young and/or small companies, rather than being only justified by a reduction in the disclosure burden, detrimental to investor protection and market integrity.

<ESMA_QUESTION_193>

Q194: 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>

In the interest of investor protection and in order to allow for informed price formation in SME-GMs, CFA Institute considers that issuers listed in SME-GM should be required to publish annual financial reports and half-yearly financial reports, as provided by the Transparency Directive. CFA Institute also considers that financial reports should be audited at least yearly, and auditing reports should be publicly disclosed.

<ESMA_QUESTION_194>

Q195: How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?

<ESMA_QUESTION_195>

CFA Institute considers that SME-GM operators should consider the appropriateness of the systems and controls established by the issuer, and whether the firm has appointed a reputable auditor, in order to ensure the quality and faithfulness of mandatory disclosures to the market.

<ESMA_QUESTION_195>

Q196: Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph Error! Reference source not found.) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?

<ESMA_QUESTION_196>

CFA Institute considers that the extension of the deadlines for producing the annual and half-yearly financial reports is proportional to the objectives pursued by the creation of SME-GMs. However, CFA Institute would invite ESMA to consider applying this extension only to issuers whose market capitalisation does not exceed € 200m or an alternative threshold.

<ESMA_QUESTION_196>

Q197: 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>

CFA Institute agrees that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR.
<ESMA_QUESTION_197>

Q198: What is your view on the possible requirements for the dissemination and storage of information?

<ESMA_QUESTION_198>

CFA Institute agrees that online publication can be considered as sufficient dissemination of information to the public. CFA Institute considers that information should both be centralised in the webpage of the issuer and the webpage of the SME-GM operator, which should in addition provide sufficient navigation functionalities to allow investors to access information in an appropriate manner (for instance, website users should be able to filter information per issuer or year).

<ESMA_QUESTION_198>

Q199: 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>

As per our response to 198, CFA Institute considers that information should both be centralised in the webpage of the issuer and the webpage of the SME-GM operator, which should in addition provide sufficient navigation functionalities to allow investors to access information in an appropriate manner (for instance, website users should be able to filter information per issuer or year).

<ESMA_QUESTION_199>

Q200: 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>

CFA Institute agrees with the assessment of ESMA in this respect, and considers that a period of 5 years should be preferred to shorter alternatives, as a matter of public record.

<ESMA_QUESTION_200>

Q201: 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>

CFA Institute agrees that the MiFID II framework should not impose, in this respect, any additional requirements to those presented in MAR.

<ESMA_QUESTION_201>

6.2. Suspension and removal of financial instruments from trading

Q202: 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>

Q203: Do you agree that NCAs would also need to consider the criteria described in paragraph Error! Reference source not found. Error! Reference source not found. and Error! Reference source not found., when making an assessment of relevant costs or risks?

<ESMA_QUESTION_203>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_203>

Q204: 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>

6.3. Substantial importance of a trading venue in a host Member State

Q205: 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>

Q206: 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>

6.4. Monitoring of compliance – information requirements for trading venues

Q207: 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>

6.5. 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

Q208: Do you support the approach suggested by ESMA?

<ESMA_QUESTION_208>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_208>

Q209: 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>

Q210: 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>

Q211: 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>

Q212: 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>

7. Commodity derivatives

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

Q213: 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>

Q214: 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>

Q215: 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>

Q216: 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>

Q217: 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>

Q218: 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>

Q219: 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>

Q220: 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>

Q221: 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>

Q222: 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>

Q223: 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>

Q224: 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>

Q225: 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>

Q226: 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>

Q227: 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>

Q228: 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>

7.2. Position reporting thresholds

Q229: 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>

Q230: 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>

Q231: 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>

7.3. Position management powers of ESMA

Q232: 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>

Q233: What other factors and criteria should be taken into account?

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

Q234: Do you agree with ESMA's definition of a market fulfilling its economic function?

<ESMA_QUESTION_234>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_234>

Q235: 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>

Q236: What other factors and criteria should be taken into account?

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_236>

Q237: 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>

Q238: 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>

Q239: What other factors and criteria should be taken into account?

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_239>



Q240: 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>

Q241: 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>

Q242: What other criteria and factors should be taken into account?

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>

Q243: 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>

8. Portfolio compression

Q244: 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>

Q245: 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>