



Association of the Luxembourg Fund Industry
Association Luxembourgeoise des Fonds d'Investissement

ALFI COMMENTS AND RESPONSES TO THE EUROPEAN COMMISSION'S CONSULTATION ON THE REVIEW OF MIFID

ALFI is the representative body of the 2.1 trillion Euro Luxembourg fund industry. It counts among its members not only investment funds but also a large variety of service providers of the financial sector. There are 3,656 undertakings for collective investment in Luxembourg, of which 2,284 are multiple compartment structures containing 11,505 compartments. With the 1,372 single-compartment UCIs, there are a total of 12,877 active compartments or sub-funds based in Luxembourg.

According to September 2010 EFAMA figures, Luxembourg's fund industry holds a market share of 30.9% of the European Union fund industry, and according to 2009 Lipper Hindsight data, 76.2% of UCITS that are engaged in cross-border business are domiciled in Luxembourg. As one of the main gateways to the European Union and global markets, Luxembourg is the largest cross-border fund centre in the European Union and, indeed, in the world.

ALFI welcomes the Commission's initiative to consult the public and the financial industry on the review of the implementation of MiFID in order to assess to what extent the current rules should be adapted. Since the fund sector as such is not directly concerned with all aspects of the consultation, we will limit ourselves to comments with regard to the sections on developments in market structures, pre- and post-trade transparency, and investor protection and provision of investment services, respectively on sections 2, 3, 6, 7, 8 and 9 of the paper.

As a general comment, it is our understanding that the questions raised by the Commission aim at clarifying some ambiguities of the currently applicable rules and assessing whether the MiFID rules should be extended to various instruments and entities due to market developments and experience from the financial crisis, to ensure that there is a harmonised, high level of protection for investors. ALFI wishes to underline however that the asset management sector was not at the roots of the financial crisis. When bringing any modification to the current regulatory framework to avoid future market failures, one should ensure that the costs of such modification should not outweigh the benefits expected and that it is proportionate in regard of the objective pursued. More particularly, in the context of investment funds, ALFI wishes to underline that most of the principles of MiFID are already fulfilled by UCITS, the 2009/65/EC directive on undertakings for collective investments in transferable securities (the "UCITS IV Directive") and its implementing directive (Directive 2010/43/EC) having endorsed these principles for the vehicles subject to its scope. In particular, it must be noted that certain functions such as the maintenance of the fund shareholder register, which can be delegated to a third party, are purely administrative and ancillary functions. Third parties entrusted with such functions are therefore not to be considered as distributors for the purpose of MiFID. ALFI would also urge the Commission

not to adopt rules that would conflict or endanger the UCITS framework and the UCITS brand worldwide. More specifically we would strongly recommend that the current classification of UCITS as non-complex products under MiFID be maintained. Finally ALFI is of the opinion that any new reporting obligation to investors should be meant to bring real added value for those investors and should not result in an information overkill. Priority should be given to achieving a level-playing field among the financial industry in regard of existing obligations imposed in terms of distribution services and product regulation.

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Comments on Section 2 – Development in market structures

(1) What is your opinion on the suggested definition of admission to trading? Please explain the reasons for your views.

ALFI would like to stress that many investment funds are traded on certain markets further to investor demand to add such funds to local trading platforms and without the fund promoter having any control or even being informed either by the stock exchange of such admission to trading. Such situations require consideration in our view (see our comments regarding the extension of transparency requirements, question 34 below).

(2) What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

(3) What is your opinion on the proposed definition of an organised trading facility? What should be included and excluded?

It is ALFI's view that in the context of the investment fund industry transfer agents fall outside the proposed category of an organised trading facility and the scope of MiFID. Transfer agents are company registrars, primarily acting as contractual agents of one or more collective investment schemes, for which they assume the performance of mere administrative and execution tasks related to the transmission and execution of orders related to the fund's shares. In this sense they perform a purely mechanical and incidental function which is necessary to record the registration details of the owners of fund shares. It is important to note that the administrative functions of a UCITS fund are already subject to a regulated process, as enshrined in the UCITS Directive. Therefore the proposed broadening of the MiFID rules on the admission to trading and the organisation of trading facilities/ functionalities to this type of activity or entity would not be relevant.

(4) What is your opinion about creating a separate investment service for operating an organised trading facility? Do you consider that such an operator could passport the facility?

For the reasons explained above, the transfer agency function in the context of investment funds should not be linked to any concept of an investment service. There is no need in our view to create a separate investment service in the case of investment funds since the trading on such funds through the distributors and the subscriptions and redemptions on the level of the fund already fulfil this role.

(5) What is your opinion about converting all alternative organised trading facilities to MTFs after reaching a specific threshold? How should this threshold be calculated, e.g. assessing the volume of trading per facility/venue compared with the global volume of trading per asset class/financial instrument? Should the activity outside regulated markets and MTFs be capped globally? Please explain the reasons for your views.

Not applicable.

Section 3 – Pre- and post –trade transparency

Item 3.2 Equity like instruments

(33) What is your opinion about extending transparency requirements to depositary receipts, exchange traded funds and certificates issued by companies? Are there any further products (e.g. UCITS) which could be considered? Please explain the reasons for your views.

(34) Can the transparency requirements be articulated along the same system of thresholds used for equities? If not, how could specific thresholds be defined? Can you provide criteria for the definition of these thresholds for each of the categories of instruments mentioned above?

ALFI does not favour an extension of the transparency regime to UCITS, which are mostly negotiated on their daily net asset value with primary market features, and which price is not subject to the law of offer and demand.

As also mentioned in Section 2 above, many funds are admitted to trading and actively traded on certain stock markets without the fund promoter being informed by the stock exchange of such admission to trading. In such a situation, the fund has no control over the admission to trading as this is instigated at the request of potential buyers. If a broader extension of the rules is therefore considered, transparency requirements should be applicable to the stock exchange market makers offering tradable prices in the fund shares as opposed to the fund itself.

Item 3.3 – Trade transparency for shares traded only on MTFs or organised trading facilities

In ALFI's view, the Commission's proposals as to the transparency regime for shares traded on MTFs or organised trading facilities should not be applied to investment fund transfer agents since the buying and selling of shares at the transfer agent implies only one official daily price and all trades are done based upon an unknown net asset value.

(37) What is your opinion on the suggested modification to the MiFID framework directive in terms of scope of instruments and content of overarching transparency requirements? Please explain the reasons for your views.

ALFI does not see any need to modify the current rules as far as UCITS are concerned, since a high level of transparency is already required under the provisions of the UCITS Directive.

Section 6 . Transaction reporting

In view of the above, ALFI does not agree with the extension of transaction reporting requirements as far as UCITS are concerned.

Section 7 – Investor protection and provision of investment services

Item 7.1.1 Optional exemptions for some investment service providers

(84) What is your opinion about limiting the optional exemptions under Article 3 of MiFID? What is your opinion about obliging Member States to apply to the exempted entities requirements analogous to the MiFID conduct of business rules for the provision of investment advice and fit and proper criteria? Please explain the reasons for your views.

As a general comment, ALFI would like to underline that the UCITS Directive has endorsed the current MiFID provisions as regards UCITS management companies. We would therefore stress once more that, although we understand the aim of the narrowing of the scope of exemption from the MiFID for investment service providers, the application of the proposed requirements to fund transfer agents should not be contemplated. As mentioned above, transfer agents do not provide any investment advice and do not execute any transactions as set out under MiFID. Transfer agents do not act in the capacity of intermediaries bound to the end investor by a contractual relationship, and should therefore not be subject as such to fiduciary and conduct of business duties with regard to the latter, given the purely administrative nature of the relationship. The scope of the MiFID in this regard should therefore not be reviewed.

Item 7.1.2. Application of MiFID to structured deposits

(85) What is your opinion on extending MiFID to cover the sale of structured deposits by credit institutions? Do you consider that other categories of products could be covered? Please explain the reasons for your views.

ALFI does not see the need to extend MiFID to cover the sale of structured deposits by credit institutions. The "PRIIP" initiative is designed in any case to cover such products.

Item 7.1.3. Direct sales by investment firms and credit institutions

(86) What is your opinion about applying MiFID rules to credit institutions and investment firms when, in the issuance phase, they sell financial instruments they issue, even when advice is not provided? What is your opinion on whether, to this end, the definition of the service of execution of orders would include direct sales of financial instruments by banks and investment firms? Please explain the reasons for your views.

As mentioned above, ALFI is of the view that MiFID should not be applied to fund transfer agents in case of direct subscriptions into an investment fund. Transfer agents should not be considered as investment firms and do not provide any advice to investors. They usually do not know the fund's end client and are not in a position to perform any test as understood by MiFID. This is the responsibility of the fund's management company, which is already subject to the MiFID requirements due to the extension of such requirements introduced in the UCITS IV directive.

It is useful to note that for the application of MiFID rules, one must assess the activity/function performed by the entity concerned, rather than the nature of such entity. As regards direct sales of investment fund shares by banks for example, such sales should be subject to the MiFID conduct of business rules since it does constitute a distribution activity. However when a bank acts as transfer agent, such function should not be subject to MiFID rules.

7.2. Conduct of business obligations

Item 7.2.1. Execution only services

(87) What is your opinion of the suggested modifications of certain categories of instruments (notably shares, money market instruments, bonds and securitised debt), in the context of so-called "execution only" services? Please explain the reasons for your views.

ALFI strongly disagrees with the proposal to modify or abolish the "execution only" regime under MiFID. UCITS should remain classified as non-complex and no other assessment should therefore be made for such products.

Putting forward the suggestion that not all UCITS are non-complex challenges in our view the very basis of the in-built investor protection mechanisms of the UCITS product itself, and of the UCITS IV Directive. The rationale behind the classification of UCITS funds as non-complex instruments under MiFID is indeed that such funds are already subject to regulations ensuring compliance with the criteria set out under article 38 of the MiFID Implementing Directive, *i.e.* most importantly appropriate liquidity, negotiability, high risk management standards but also limitations on the risk of losses for investors (*i.e.* investors in a UCITS may never lose more than the subscription amount), and information provided to investors which is adequately comprehensive. The UCITS regime has the merit of being a unified regime and it would not be appropriate to intervene in this framework. ALFI urges the Commission to refrain from doing so.

It must be underlined in this context that "UCITS" has become a worldwide recognized brand for retail fund products, primarily thanks to its high level of investor protection. Modifying the current rules as to the classification of UCITS under MiFID could give the wrong impression to investors and non EU regulators, especially in key markets such as Asia (Hong Kong and Taiwan) and Latin America (Chile and Peru), that UCITS investor protection provisions are insufficient. The consequences of such a change would be significant and detrimental to the European fund industry as a whole, with some distributors likely to avoid offering complex UCITS given the additional workload and obligations that would be entailed by the applicable appropriateness requirements, and difficulty to market UCITS outside Europe since some non-EU regulators might decide to ban some UCITS to retail distribution on their territory.

Finally one should take into account the fact that some new strategy funds will probably migrate to become subject to the Alternative Investment Fund Managers Directive. Therefore the modifications which can seem to be justified now for the Commission to a certain degree may not be true in the future for a certain number of products and will prove to have been unnecessary.

(89) Do you consider that all or some UCITS could be excluded from the list of non-complex financial instruments? In the case of a partial exclusion of certain UCITS, what criteria could be adopted to identify more complex UCITS within the overall population of UCITS? Please explain the reasons for your views.

ALFI advocates against any exclusion of UCITS products from the list of non-complex financial instruments for the reasons mentioned above. Moreover, Option A d) of the consultation paper seems to be based on the erroneous assumption that complex products are necessarily sophisticated ones, and that they are risky per se. It must be underlined in this context that the notion of a sophisticated fund has now been abolished under the UCITS regime, and that it is not possible to identify reliable complexity criteria to operate a simple distinction between the various UCITS.

(90) Do you consider that, in the light of the intrinsic complexity of investment services, the "execution-only" regime should be abolished? Please explain the reasons for your views.

As mentioned above, ALFI strongly disagrees with the proposal to abolish the "execution only" regime under the MiFID.

Item 7.2. Investment advice

(91) What is your opinion of the suggestion that intermediaries providing investment advice should: 1) inform the client, prior to the provision of the service, about the basis on which advice is provided; 2) in the case of advice based on a fair analysis of the market, consider a sufficiently large number of financial instruments from different providers? Please explain the reasons for your views.

(92) What is your opinion about obliging intermediaries to provide advice to specify in writing to the client the underlying reasons for the advice provided, including the

explanation on how the advice meets the client's profile? Please explain the reasons for your views.

As mentioned in our response to question 86, it is ALFI's understanding that fund transfer agents should not be subject to the proposed requirements related to investment advice, since they do not provide any advice to investors.

Furthermore, although we support the view that intermediaries giving investment advice who are located with the European Economic Area (EEA) should be regulated entities and should be subject to certain obligations in terms of disclosure in order to ensure proper investor protection, we are of the opinion that the proposed measures are disproportionate. More specifically, the requirement for an intermediary to inform the investor whether they give advice on the basis of an independent and fair analysis is unclear. There is no definition of the terms 'independent' or 'fair analysis' provided by the Commission and in practice these may be difficult to determine; the requirement to specify in writing the underlying reasons for the advice is also disproportionate in comparison to the obligations of other industries who sell services or goods to the general public. Finally ALFI would request that any modifications of distribution standards towards private clients be equivalently applied to all products.

(93) What is your opinion about obliging intermediaries to inform the clients about any relevant modifications in the situation of the financial instruments pertaining to them? Please explain the reasons for your views.

(94) What is your opinion about introducing an obligation for intermediaries providing advice to keep the situation of clients and financial instruments under review in order to confirm the continued suitability of the investments? Do you consider this obligation be limited to longer term investments? Do you consider this could be applied to all situations where advice has been provided or could the intermediary maintain the possibility not to offer this additional service? Please explain the reasons for your views.

ALFI does not share the view of the Commission on the extent to which a longer term assistance to investors should be provided by intermediaries. The proposals made in the consultation paper will be impossible to comply with in practice. The suitability test performed before the sale of a financial instrument can only be performed once at a certain point in time and cannot realistically be done annually. As regards UCITS in particular, it must be mentioned that such vehicles are already subject to similar disclosures to those detailed in paragraph 3) a), i.e. regular reporting on the value and performance of the product, issuing of a new KID upon material modifications of the fund's situation etc. UCITS being non-complex instruments, the quarterly reporting suggested in this paragraph should in any case be excluded.

It must be mentioned that the update of clients' personal information on an annual basis, as suggested in paragraph 3)b) will entail a cost. Although some intermediaries do provide such service, we question whether all retail investors would agree to pay for an annual review of their personal information, notwithstanding a client's responsibility to inform their intermediary of any material change to their circumstances.

ALFI would see very little benefit in extending MiFID rules in this regard and fears that the suggestions made may end up in an information overload for the investor. In our view the initial information obtained on the investor in the pre-contractual period and the warning to

this investor that he/ she should inform the adviser of any change in his/ her personal situation should be sufficient.

(95) What is your opinion about obliging intermediaries to provide clients, prior to the transaction, with a risk/gain and valuation profile of the instrument in different market conditions? Please explain the reasons for your views.

ALFI disagrees with the suggestion to oblige intermediaries to provide such risk/gain and valuation profile of the instrument in different market conditions. There is already enough information on those aspects in the UCITS Key Investor Information Document. Imposing new but similar obligations would be redundant given the existence of the KID. Moreover, the future "PRIP" directive, which will be an autonomous text, will probably also contain a similar document based on the KID standard. In our view the issue of the risk/gain disclosure is more about ensuring a level-playing field between all financial products in terms of disclosure rather than about the strengthening and duplicating of existing rules.

(96) What is your opinion about obliging intermediaries also to provide clients with independent quarterly valuations of such complex products? In that case, what criteria should be adopted to ensure the independence and the integrity of the valuations?

ALFI would like to reiterate that UCITS are non-complex products and should therefore not be concerned by this proposed rule. It must be underlined that even as concerns non-UCITS funds, the AIFMD provides for an independent valuation. The function proposed is therefore already ensured in the case of investment funds. As far as the frequency of complex products valuation is concerned, ALFI is of the opinion that the current regime should not be modified, since investors might not necessarily be interested in receiving such reporting on a quarterly basis, for example when it comes to long term investments. Once again we would also stress that the issue is more of the level-playing field to be achieved in terms of valuation between the various financial products rather than the goldplating of existing provisions.

(98) What is your opinion about introducing an obligation to inform clients about any material modification in the situation of the financial instruments held by firms on their behalf? Please explain the reasons for your views

As mentioned above, regulated funds must already inform clients about any material modification of their situation. Such modification of MiFID would be redundant as far as these funds are concerned.

(99) What is your opinion about applying the information and reporting requirements concerning complex products and material modifications in the situation of financial instruments also to the relationship with eligible counterparties? Please explain the reasons for your views.

Not applicable for UCITS.

(100) What is your opinion of, in the case of products adopting ethical or socially oriented investment criteria, obliging investment firms to inform

clients thereof?

ALFI wishes to mention that investment funds do already provide such disclosure in the description of their investment strategy and obviously in their marketing material.

(101) What is your opinion of the removal of the possibility to provide a summary disclosure concerning inducements? Please explain the reasons for your views.

ALFI does not agree with the removal of the possibility to provide a summary disclosure on inducements. The fund industry has experienced no requests for more detailed information from investors over the past years. Should one wish to enhance investor protection, a more sophisticated approach of the issue would be needed and this should be discussed in-depth before any modification of the current regime is adopted.

(102) Do you consider that additional ex-post disclosure of inducements could be required when ex-ante disclosure has been limited to information methods of calculating inducements? Please explain the reasons for your views.

ALFI does not consider that additional ex-post disclosure of inducements should be required. As explained above, our industry has not had any requests for more detailed disclosure of inducements until now. The current regime providing for the obligation to provide ex-post disclosure only upon request should be maintained.

(103) What is your opinion about banning inducements in the case of portfolio management and in the case of advice provided on an independent basis due to the specific nature of these services? Alternatively, what is your opinion about banning them in the case of all investment services? Please explain the reasons for your views.

In ALFI's view this issue should be assessed on a case by case basis rather than imposing a global ban of inducements. It must be underlined that it is an overarching principle that each professional must act in the best interest of his/ her clients and any assessment should be made taking this principle into account. It is ALFI's view that it is the distributor's responsibility to ensure that they provide the right service to the end client. As regards collective investment undertakings in particular, boards of directors of management companies or fund promoters should in our opinion ensure that fees remain competitive and are paid in the interest of the fund, in accordance with applicable rules of conduct. Finally, consideration needs to be given to the impact this may have on global distribution of UCITS in other key markets outside of the EU. With UCITS as a market leader in global fund products there is a potential risk that UCITS funds could be placed at a disadvantage to local competitor products for non-EU distribution if strict inducements provisions are applied that would be significantly more restrictive than local practices in these non-EU jurisdictions.

(104) What is your opinion about retaining the current client classification regime in its general approach involving three categories of clients (eligible counterparties, professional and retail clients)? Please explain the reasons for your views.

ALFI is not in favour of modifying the current rules, which do not raise major issues in our view. The modification proposed would make the client classification regime too complex.

(105) What are your suggestions for modification in the following areas:

- a) Introduce, for eligible counterparties, the high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading when informing the client;**
- b) Introduce some limitations in the eligible counterparties regime. Limitations may refer to entities covered (such as non-financial undertakings and/or certain financial institutions) or financial instruments traded (such as asset backed securities and non-standard OTC derivatives); and/or**
- c) Clarify the list of eligible counterparties and professional clients per se in order to exclude local public authorities/municipalities? Please explain the reasons for your views.**

ALFI does not see the need to restate the high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading when informing the client since in our view they already exist and should actually apply to any regulated entity. As to the eligible counterparty regime, ALFI is of the view that the current framework works well. Where issues may have been encountered, this is likely to be more as a result of misunderstanding than a failure within the framework itself. It must be underlined that clients must give their express consent to be treated as an eligible counterparty under the current regime, and can request to be treated as retail clients. Hence there is a responsibility on their side to choose the correct client category applicable to their circumstances.

On this basis, ALFI does not believe an exclusion per se for local public authorities/municipalities is necessary, as the option already existed for such clients to request a higher level of investor protection.

(106) Do you consider that the current presumption covering the professional clients' knowledge and experience, for the purpose of the appropriateness and suitability test, could be retained? Please explain the reasons for your views.

ALFI considers that the current presumption of the professional's knowledge and experience should be retained. It would not make sense to have a classification system and abolish this presumption. It must be underlined that clients can always request the retail investor status if they wish to under the current regime. Concerning institutions such as municipalities, such bodies could prevent any issue by foreseeing in their articles or deed that they are to be considered as retail investors so that they are certain to stay bound to it and invest accordingly.

(107) What is your opinion on introducing a principle of civil liability applicable to investment firms? Please explain the reasons for your views.

(108) What is your opinion of the following list of areas to be covered: information and reporting to clients, suitability and appropriateness test, best execution, client order handling? Please explain the reasons for your views.

The applicability of existing national civil law principles to the sale of financial products has not given rise to major issues up to now in our view. Furthermore it is ALFI's view that civil liability harmonization in Europe is a general topic which should not be addressed in a text like MiFID.

(109) What is your opinion about requesting execution venues to publish data on execution quality concerning financial instruments they trade? What kind of information would be useful for firms executing client orders in order to facilitate compliance with best execution obligations? Please explain the reasons for your views.

(110) What is your opinion of the requirements concerning the content of execution policies and usability of information given to clients should be strengthened? Please explain the reasons for your views.

ALFI sees no need in strengthening the current rules. More detailed information regarding execution quality would not bring any additional value in our view.

(111) What is your opinion on modifying the exemption regime in order to clarify that firms dealing on own account with clients are fully subject to MiFID requirements? Please explain the reasons for your views.

Not applicable to undertakings for collective investment. ALFI wishes to stress once again that fund transfer agents do not deal on their own account when performing their function and do not hold shares in any type of custodial capacity.

(112) What is your opinion on treating matched principal trades both as execution of client orders and as dealing on own account? Do you agree that this should not affect the treatment of such trading under the Capital Adequacy Directive? How should such trading be treated for the purposes of the systematic internaliser regime? Please explain the reasons for your views.

Not applicable.

(113) What is your opinion on possible MiFID modifications leading to the further strengthening of the fit and proper criteria, the role of directors and the role of supervisors? Please explain the reasons for your view.

ALFI wishes to underline that fit and proper criteria already exist also for regulated funds. Although we agree that given the complexity of financial markets more could be done to strengthen the impact of existing rules (for example in terms of compliance training), this would only be a matter of adaptation and does not necessitate a modification of MiFID itself.

(114) What is your opinion on possible MiFID modifications leading to the reinforcing of the requirements attached to the compliance, the risk management and the internal audit function? Please explain the reasons for your view.

ALFI would not favour any modification of requirements regarding the abovementioned functions. Specific rules governing these functions are already in place in Luxembourg and it would make no sense to duplicate them.

(115) Do you consider that organisational requirements in the implementing directive could be further detailed in order to specifically cover and address the launch of new products, operations and services? Please explain the reasons for your views.

ALFI sees no need to further detail the requirements covering the launch of new products, operations and services. This would result in an unnecessary additional burden for entities that are already regulated. It must be underlined once again that management companies of regulated investment funds must always act in the best interest of their investors and must have sufficient organisational structure in place to obtain a regulated management company status.

(116) Do you consider that this would imply modifying the general organisational requirements, the duties of the compliance function, the management of risks, the role of governing body members, the reporting to senior management and possibly to supervisors?

ALFI does not see the need for modifying the abovementioned requirements. It must be underlined that in the investment fund industry the compliance function is always involved in the launching of products. ALFI deems it of utmost importance that any requirement be applied giving due consideration to the principle of proportionality. Providing for further detailed rules in this regard could prove too cumbersome for some entities in comparison to the objective pursued.

(117) to (124): not applicable.

Section 8 – Further convergence of the regulatory framework and of supervisory practices

Item 8.1.2 – Telephone and electronic recording

(129) Do you consider that a common regulatory framework for telephone and electronic recording, which should comply with EU data protection legal provisions, could be introduced at EU level? Please explain the reasons for your views.

(130) If it is introduced do you consider that it could cover at least the services of reception and transmission of orders, execution of orders and dealing on own account? Please explain the reasons for your views.

(131) Do you consider that the obligation could apply to all forms of telephone conversation and electronic communications? Please explain the reasons for your views.

(132) Do you consider that the relevant records could be kept at least for 3 years? Please explain the reasons for your views.

In ALFI's view, the cost of maintaining records of telephone conversations is extremely high and would be disproportionate to the objective pursued, even if a period of 3 year retention is foreseen. Moreover data privacy legislation requires not to keep such information longer than necessary. The practice shows that it is very difficult to filter out from recordings the relevant elements needed for appreciating a specific situation. Finally it must be underlined that whilst the telephone call may be the basis for the placing of the client order, the contract note is actually the formal confirmation and basis of the contractual arrangement. It should therefore be sufficient for the recordkeeping requirements to be met by retention of contract notes for 5 years, not the telephone communications. If there is any issue based on telephone

miscommunication this would normally be sorted out with the client within a very short timeframe.

(133) to (137): No comments.

Item 8.3. Access of third country firms to EU markets

(138) In your opinion, is it necessary to introduce a third country regime in MiFID based on the principle of exemptive relief for equivalent jurisdictions? What is your opinion on the suggested equivalence mechanism?

(139) In your opinion, which conditions and parameters in terms of applicable regulation and enforcement in a third country should inform the assessment of equivalence? Please be specific.

ALFI welcomes that an equivalence based approach be adopted by the Commission in regard of third countries. We would however recommend to adopt pragmatic rules in this context so as to cover a maximum of situations, the assessment of equivalence needing to be addressed on a case by case basis. Therefore we would advocate that a presumption of equivalent supervision be established concerning entities located in OECD countries. The conclusion of Memoranda of Understanding, in particular with non-OECD countries' supervisory authorities is also to be envisaged in our view.

Section 9. Reinforcement of supervisory powers in key areas

Item 9.1. Ban on specific activities, products or practices

(142) What is your opinion on the possibility to ban products, practices or operations that raise significant investor protection concerns, generate market disorder or create serious systemic risk? Please explain the reasons for your views.

ALFI does not agree with the suggestion to foresee the possibility to ban certain products, practices or operations. It is our view that competent authorities do already have the necessary powers to suspend the latter in case of serious problem. As far as regulated funds are concerned, it must be underlined that investor protection is adequately ensured by the approval of the fund's prospectus and the continuous supervision of such fund by the supervisory authority. Allowing national authorities to ban certain products could result in arbitrary decisions being taken by such authorities and create legal uncertainty. It could also have an impact on the ability of certain structures to fulfil their obligations in non-EU countries where they are distributed, and constitute another source of systemic risk. Moreover, ALFI would like to draw the Commission's attention to the fact that in the spirit of the UCITS directive Member States may not put obstacles to the distribution on their territory of products which have been granted the UCITS passport. One should avoid jeopardizing this principle.

(144) Are there other specific products which could face greater regulatory scrutiny? Please explain the reasons for your views.

In ALFI's view Mifid should be a reference for setting a harmonised standard in terms of distribution services in Europe. We would therefore recommend the adoption of similar legislation for other areas of the financial industry. In terms of product regulation we are of the opinion that the PRIIP initiative will allow for the achievement of a level-playing field between the various products. The combination of the above should ensure adequate investor protection.