

**ALFI COMMENTS AND RESPONSES TO ESMA'S CONSULTATION PAPER ON GUIDELINES ON
CERTAIN ASPECTS OF THE MiFID COMPLIANCE FUNCTION REQUIREMENTS**

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 3,845 undertakings for collective investment in Luxembourg, of which 2,427 are multiple compartment structures containing 11,876 compartments. With the 1,418 single-compartment UCIs, there are a total of 13,294 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 ESMA's initiative to consult the public and the financial industry on certain aspects of the compliance function in order to enhance clarity and foster convergence in the implementation of the MiFID organisational requirements.

As a general comment, we would like to stress that although the compliance function is in our view key to the sound organisation of investment firms, certain proposals in the consultation document do not take into account the need for proportionate application of the rules according to the size and nature of the business concerned. More specifically, we would recommend that such proportionality be more explicitly envisaged as regards the monitoring, reporting and effectiveness aspects of the compliance function.

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Comments on Section III

(Q1) Compliance risk assessment – Do you agree that investment firms should ensure that, where the compliance function takes a risk-based approach, any comprehensive risk assessment is performed to determine the focus and the scope of the monitoring, reporting and advisory activities of the compliance function?

ALFI believes this is indeed an efficient way of organising and using compliance resources. As a basis, internal and external audit and risk management reports can be used, as well as the regular reports prepared by the Compliance (if any).

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

In our view the proposals are adequate. However we would like to underline that for small-sized institutions resources may be limited. In such case, and taking into consideration the proportionality principle, it would be a good idea to foresee that the Compliance may use the reports produced by the risk management rather than perform all controls itself.

(Q3) Reporting obligations of the compliance function – Please provide your comments (if any) on any or all aspects of this guidelines on reporting obligations of the compliance function.

ALFI overall agrees with the principle of this guideline. However we think that the application of this principle should be proportionate to the size of the organisation concerned when it comes to certain detailed rules such as written reports on future relevant regulatory changes.

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

In general, ALFI supports the principle of the Compliance's responsibility to train staff on compliance matters or to arrange trainings in cooperation with other units. In our view such training should be appropriate to the needs of the business, with Compliance ensuring regulatory topics are sufficiently covered for staff concerned.

Comments on Section IV – Guidelines on organisational requirements of the compliance function

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

The present set-up for the compliance function should be maintained as an independent function. It must be stressed however that coordination with other control functions and oversight of delegated functions within the financial institution is of course paramount.

ALFI would like to underline that some of the detailed organisation measures recommended in the consultation paper could prove difficult to accommodate in the structure of medium or small-sized firms.

(Q6) Permanence of the compliance function – Do you agree that, in order to ensure that the compliance function performs its tasks and responsibilities on an ongoing permanent basis, investment firms should provide:

- (i) Adequate stand-in arrangements for the responsibilities of the compliance officer which apply when the compliance officer is absent; and**
- (ii) Arrangements to ensure that the responsibilities of the compliance function are performed on an ongoing basis?**

ALFI agrees on both points. However the size and nature of the concerned investment firm should determine the type of arrangement to be provided.

(Q9) Exemptions – Please provide your comments (with reasons) on any or all aspects of this guidelines on Article 6(3) exemptions.

ALFI agrees with the proposed list of exemptions. As a general remark we think that similar approaches among the different regulatory authorities should be ensured in this regard.

(Q11) Outsourcing of the compliance function

ALFI shares ESMA's analysis. As a general principle an internal compliance function should be favoured but the nature, size or scope of a firm's business may indeed justify the outsourcing of this function.

Comments on Section V

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

(Q13) Guideline on competent authority review of the compliance function – Do you agree that competent authorities should also assess whether amendments to the organisation of the compliance function are required due to changes in the scope of the business model of the investment firm, and where such amendments are necessary, monitor whether these amendments have been implemented.

ALFI agrees with the need for competent authorities to review whether measures for the compliance function are adequate. However such review should in our view be carried out on a risk-based approach basis, seen the number of other regulatory priorities to be tackled.
