verbraucherzentrale Bundesverband

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vzbv response to ESMA MiFID2/MiFIR Consultation Paper

ESMA/2014/549

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1. General remarks

Dear Mr Maijoor,

German Federation of Consumer Organisations (vzbv) appreciates the opportunity to respond to the ESMA MiFID2/MiFIR consultation paper. ESMA's technical advice to the Commission is of primary importance with respect to realizing the consumer protection standards established under the new MiFID2/MiFIR provisions. For that reason, our response is restricted to section 2 on investor protection and as well as to a number of key issues important from a retail investor perspective.

This said vzbv would like to particularly encourage ESMA to stick to its draft technical advice under section 2.15. The legitimacy of inducements in case of non-independent financial advice is a critical issue for retail investors. vzbv explicitly supports the negative criteria set out by ESMA's draft technical advice while proposing only a minor amendment. However, we are concerned that the additional positive criteria effectively establish a dual escape clause, rendering the well-founded negative criteria ineffective and thus undermining the quality enhancement condition established by Article 24 (9) of MiFID2.

2. Detailed responses to investor protection subchapters

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?

Yes, we agree. However, the draft technical advice needs to highlight more explicitly that the applicability of MiFID2 requirements depends on the distinction between investment (i.e. product specific) and generic advice only. Thus, all forms of investment advice must be subject to MiFID2 requirements, whatever distributional channel is used.

Q3: Do you agree that the existing compliance requirements should be expanded?

Yes, we agree. We consider the compliance function as one of the key factors to improve the business culture of investment firms and to enforce compliance with the duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

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.

We suggest that records of the remuneration policies of investment firms should be included in the minimum list.

2.6. Recording of telephone conversations and electronic communications

Q8. What additional measure(s) could firms implement to reduce the risk of noncompliance with the rules in relation to telephone recording and electronic communications?

The draft technical advice states (§ 11, page 35) that "recording rules do not generally apply to the service of investment advice". In our view, this is not in line with the general duty to keep records "of all services, activities and transactions undertaken by it which shall be sufficient to enable the competent authority to fulfill its supervisory tasks and to perform the enforcement actions under this Directive (…) and in particular to ascertain that the investment firm has complied with all obligations <u>including those with respect to clients or potential clients</u> and to the integrity of the market" (MiFID2 Article 16 (6)).

Our reading of the abovementioned § 11 of chapter 2.6 of the draft technical advice implies that ESMA is focusing more on the integrity of the market as on firms' obligation vis-à-vis clients or potential clients. We thus demand a correct recording of all services, investment advice included, as established by Article 16 (6) of the directive.

Moreover, it is important to inform clients that services and conversations are recorded and that a copy of these records has to be provided on request for a period of at least five years. Finally we suggest to drop the allowance of the use of private devices in this context.

Q9. Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?

Yes, we agree.

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?

In case of investments advice, the reason for the advice, reflecting the suitability requirement, should be recorded.

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

No, clients should not be required to sign any minutes or notes when that signature states that the content of that minutes or notes is correct or has been fully understood by the client. The draft technical advice is not fully clear to us on this point. Particularly, we are concerned that § 9 (v) allows firms to include critical information on a product's risk-return profile, costs and charges or possible future developments even if that

information has not been fully understood by the client. In that case, a signature is effectively transferring liability for mistakes or misinformation from the firm to clients. Instead, the draft technical advice should require investment firms to hand out minutes or notes to the client and clients to sign the receipt of that minutes or notes.

Q12. Do you agree with the proposals for storage and retention set out in the above draft technical advice?

Yes, we agree. Moreover, the draft technical advice should require firms to inform clients that services and conversations are recorded, about the way the recording is performed, and that a copy of the records will be provided on request for a period of at least five years.

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.

Products available on primary markets are subject to greater risk concerning conflicts of interest induced by commissions and other third party payments as valuation is more complex and hence less transparent. However, products available on secondary markets should be subject to the same rules to guarantee a level-regulatory playing field and prevent regulatory arbitrage. Establishing different rules for different markets will in effect undermine consumer protection standards and hamper firm refinancing operations.

This is all the more important as shares and bonds are not in scope of the recently adopted PRIIPs regulation, which means that product information (summary prospectuses) on shares and bonds will remain unformatted, not allowing comparison to other investment products.

Moreover, investment firms can be subject to massive conflicts of interest (i.e. facing incentives not to act in the sole and best interest of the client) when there is a need to sell own bonds or shares (i.e. to raise additional capital) or in the case when primary instruments are issued by third parties and marketed by the investment firm (i.e. an IPO managed by an investment firm). In the end, the risk of investor detriment can be as massive in primary (secondary) markets (emission and trading of bonds and shares) as in packaged product markets.

The recent mis-selling or market abuse cases such as those of government bonds (individual Greek bondholders in 2011 who were excluded from the debt restructuring negotiations), bank shares (e.g. Natixis in France in 2007) or of bank preferred shares (e.g. Bankia in Spain in 2012) provide prominent examples for the need to expand distributor requirements to primary and secondary markets.

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?

It appears necessary to set out such a requirement. As the distributing firm is selling the product to consumers, it is responsible that information is correct, complete and accurately communicated. The distributor can be held liable for any form of misinformation.

Moreover we suggest to precisely define the circumstances under which such an agreement becomes obligatory (in view of a lack of public information).

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?

No, we do not see any use in such a requirement. The proposal rests on the overly optimistic view that the distributor has an own interest in setting high investor protection standards. In our view, the information communicated under such a requirement would not focus on clients' problems but on problems concerning the sale of particular products.

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)?

In case that manufacturers become aware that products are not sold as envisaged they should firstly warn the distributor and, if no sufficient improvement occurs, terminate the contract with the distributor.

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)?

If the distributor is responsible for a misjudgment, the client should be duly informed and offered to reverse the agreement without being charged any costs, fees or monetary disadvantages.

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.

No, there is a lack of clarity concerning the incidence of an investment firm being both manufacturer and distributor. However, our reading of the draft technical advice is that in case of incidence, firms are subject to both sets of requirements. This also corresponds with § 8 of the ESMA analysis (page 43). However, we propose to explicitly address the case of incidence in the technical advice.

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.

The draft technical advice lacks clarity on the question how to deal with situations in which products are not sold as envisaged. From our perspective, the duly informed NCA must make sure that the product is either taken back by the distributor without monetary disadvantage for the customer, or is exchanged for a suitable product without the customer being charged additional costs or fees, or is kept by the customer when he or she is fully aware of the risk-return profile and explicitly explains wishing to keep the product.

2.8. Safeguarding of client assets

General remarks on sub-depository practices

When examining the general terms provided by investment firms or banks, it is generally stated that assets may be kept by depositors, sub-depositors, eventually in non EU countries, including jurisdictions where the segregation of clients' assets cannot be guaranteed (…); and that the firm cannot be responsible for any detrimental consequence, except intentional or in case of gross fault on its part.

Q42. Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from clients' assets that do not relate to those clients?

Yes we agree.

Q43. Do you agree with the proposal to specify risk warnings where firms are obliged to agree to wide ranging liens exposing their clients to risks?

Yes, we agree. The warning should not be a general warning included in the general terms of a contract but should be related to the specific financial instrument to be held in a third country where firms are obliged to agree to liens exposing clients to the risk.

Q49. Should investment firms be required to maintain systems and controls to prevent shortfalls in clients' accounts and to prevent the use of one client's financial instruments to settle the transactions of another client?

Securities lending

§ 44 of section 2.8 (page 60) of the consultation document refers to Article 32 (7) of the MiFID Implementing Directive. However, there is no question directly related to the information of clients regarding securities lending. We suggest to explicitly consult stakeholders on this issue.

Some investment firms propose as default that clients' assets may be lend to third parties. Regarding sub-depositories, we agree that some assets necessitate sub-depositary or sub-depositary in jurisdiction where the segregation of clients' assets is not guaranteed. However,

1. the information given through the general terms must be in line with MiFID2 requirements, and
2. it must be clear, whether the clients' assets remain protected by an investment protection scheme in case of default in the sub-depositary chain.

With respect to securities lending, it is foreseen that clients must agree in order to allow the firm to use their assets for lending purposes. First of all, securities lending should not be proposed to clients if it is not suitable regarding their investor profile. Secondly, agreement is only possible when the client is informed in a comprehensive and comprehensible way about the key aspects related to lending, including answers to the following questions:

1. Can the borrower use the securities against the interest of the client (e.g. using them to go short against the securities lent)?
2. How are remuneration and fees paid by the lender distributed between the investment firm and the client?
3. What are the concrete risks taken by the client and what changes do occur with respect to protection schemes?

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.

Yes, firms should be obliged to perform a periodical review of their conflicts of interest policies. However, before the adequacy of conflicts of interest policies can be assessed, firms need to review the types of conflicts of interest present (not solely materialized). Moreover, the review should not be understood as a purely internal process of the firm but should be supplemented by independent external reviewers in a sense that the firm's internal compliance review is crosschecked by externals (e.g. the NCA).

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.

Article 21 (e) should be adjusted to include all forms of commissions and not only those that go beyond standard commissions. A distributional channel based on commissions (monetary or non-monetary) is inherently prone to conflicts of interest. In its current form, Article 21 (e) assumes that conflicts of interest (e.g. selling of unsuitable products for reasons of own monetary interest) arise only when inducements are higher than a product specific base-inducement. This is misleading as it only resolves the dis-incentive to sell a particular product. The dis-incentive to sell any product remains. Thus, Article 21 (e) should be changed as follows: "the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services."

Moreover, conflicts of interest arising from monetary and non-monetary inducements are by far the most relevant with respect to potential harm for consumers. Article 21 of the MiFID Implementing Directive should therefore be amended by a quality criterion that clearly states that conflicts of interest related to remuneration or inducement are the most important with respect to potential harm to retail investors. This quality criterion should be introduced without respect to amendments adding additional categories or types of conflicts of interest to the existing list. In particular, point (e) should be dealt with separately and with clear reference to retail investors. In our view, the points (a) – (d) are more relevant with respect to professional investors and market structure.

Finally, we would like to add, that, in our view, disclosure of conflicts of interest must not necessarily be regarded as a measure of last resort as stated by § 2 of the draft technical advice (page 73). It is a matter of fact that remuneration/inducement-based conflicts of interest can neither be prevented nor managed effectively without questioning the distributional channel itself. Moreover, it should be made clear that detailed disclosure of inducements is a necessary (but not sufficient) prerequisite for fair competition between distributional channels prone to conflicts of interest and channels not prone to them.

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

vzbv supports the new provisions tackling conflicts of interest in the placing process. Moreover, we have evidence from the Belgian market that there is a need for strong Chinese walls between the departments in contact with the public and the departments in charge of placing. Incentives related to the issuance should not be allowed for the staff involved in the provision of investment services.

In particular, retail investors from Belgium have been recently confronted with an important IPO (the Belgian Post), supported by an unprecedented marketing campaign through diverse media channels. Next to more specialized banks, all main street banks participated in the pool of banks linked with the placing of shares.

While all main street banks supported the marketing campaign, they simply denied giving (personal) investment advice regarding the IPO to its customers, citing conflict of interest. However, as a result of this denial of advice, a lot of inexperienced consumers – influenced by the marketing campaign – invested in this individual share without a proper suitability assessment. Indeed, main street banks should have instead taken their responsibility and should have provided their customers (who requested this) with investment advice concerning the IPO, even though they would have had to recommend people NOT to invest in this share (as individual shares are generally not suitable for inexperienced retail investors)

2.11. Remuneration

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

Variable remuneration is highly critical with respect to reducing conflicts of interest at the point of sale. In many cases, remuneration directly linked to sales or commercial targets invectives the distributing staff not to act in the client’s best interest. However,

sales and commercial targets might be connected to remuneration more indirectly than such a simple conceptualization assumes. Supervisors thus should pay attention not only to the formal description of criteria for variable remuneration but real material change in sales processes. In the end, remuneration must be as independent as possible from the volume of sales. Any connection creates disincentives that lead distributors not to act in the client's best interest.

In particular, we propose, firstly, to explicitly address criteria for performance assessment of staff as a possible source it may have an important impact on an employee's career. Recital 77 and Article 20 (10) of MiFID2 specifically address the performance assessment as a source of conflict of interest. Thus, comparison of staff based on sales volumes achieved, even if it is not directly linked to remuneration or a performance assessment, may be detrimental to clients. Secondly, we propose to address collective remuneration schemes, known to be common practice in investment firms.

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?

Yes, we agree. However, the requirements listed as § 2 (ii - iv) of the draft technical advice are necessary but not sufficient conditions to ensure fair, clear and not misleading information.

Moreover, we are surprised that ESMA does not consult stakeholders on the first and more important proposed requirement (§ 2 (i), page 93):

"*Information addressed to or likely to be received by retail clients or potential retail clients (…) shall always give a fair and prominent indication of any relevant risks and shall not reference any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks*".

A fair and non-misleading balance between information on risks and benefits has been one of the core problems concerning the enforcement of the fair, clear and not misleading provisions of MiFID1, and should thus be subject to explicit stakeholder consultation.

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?

In our view, the use of performance scenarios is misleading with respect to the potential functioning of financial instruments as it suggests the future can be easily made foreseeable by technical analysis (having in mind average retail clients and not a well-informed scholars of statistics). We thus propose to consequently drop explicit performance scenarios when it comes to illustrate the functioning of products at the point of sale.

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?

Not fully. The critical characteristic of independent advice is a complete ban of commission. In a second step, firms providing independent advice must offer a sufficiently broad range of products (however defined). The draft technical advice needs to take this dual criterion into account, clearly stating that a ban of commission is the basis for independent advice.

2.14. Information to clients on costs and charges

Q73. Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?

Yes, we agree. However, the draft technical advice should make sure that investment firms are required to fully disclose any costs, fees as well as monetary and non-monetary inducements that are paid at AND post-point of sale via an annual invoice-like statement. The disclosure needs to be performed at group level and should aggregate payments to investment firms connected via holding structures. It is moreover of particular importance that monetary or non-monetary inducements are fully disclosed to the client in a disaggregated manner, explicitly going beyond the total reduction in yield or payments.

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.

Yes, we agree. However, we suggest to amend Annex 1 with respect to more explicitly include the case of fixed-price transaction via listing disaggregated disclosure requirements for margins or mark-ups. While Annex 1 could be read in a way as already including margins or mark-ups, any miss-reading would create a massive loophole allowing firms to circumvent disclosure requirements and would consequently result in serious detriment to clients.

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.

No, we do not agree. Generic information on costs and charges is not sufficient to enable clients to understand the impact on a product's potential return AND to compare the reduction in yield or payment to those of other products (a fundamental prerequisite for competition). Instead, all costs and charges (at and post point of sale) need to be disclosed in a disaggregated manner. The draft technical advice thus should clearly state that neither examples nor generic measures do provide appropriate information on costs and charges.

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

The most important point is to establish a level regulatory playing field with respect to cost transparency (i.e. between commission-based and fix-price transactions, i.e.

between commissions and margins). Clients need to understand that the costs of distribution channels are part of their products and either take the form of commissions directly paid to the distributor by a third party or the form of a margin.

Moreover, disaggregated cost disclosure needs to be extended to post-point of sale costs even though the client and the firm have no ongoing relationship.

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

The cumulative effect of costs and charges on the return is one of the most important criteria for consumers to assess the effectiveness and appropriateness of a financial product. To obtain a clear picture of the cost-effect, information on the potential return must be given at the end of the investment period (before and after costs) in Euro and Cent (delta of the maturity payment in Euro and Cent). Any information on the reduction in yield expressed in percent is useless for consumers.

As investment periods can be very different, information should be offered annually, in table form and cumulated. Or, alternatively, for standardized time periods (1, 5 and 10 years). Accordingly, the cumulative cost effect should be visualized on the basis of standardized investment sums (1.000 or 10.000 Euro). As costs depend on the performance of financial products, there is the need for a fictive performance. This fictive performance could be 5 percent p.a. As margins have the same effect as costs, margins also need to be considered when calculating the cost effect (difference between fair value and price).

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

Q80. Do you agree with the proposed approach for the disclosure of monetary and nonmonetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?

Yes, we agree. Full disclosure of inducements is a necessary prerequisite for retail investors to compare the costs and benefits of different distributional channels and make an informed choice. Effectively, clients need an invoice-like statement that contains easy-to-understand information on the costs of advice.

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.

During the MiFID2 recast process, we advocated a complete ban on inducements. It is a matter of fact that inducements are totally incompatible with an investment's firm duty to act in the best interest of the client. The mere difficulty in setting up criteria for inducements that are quality enhancing, as discussed here, strengthens this belief.

This said, in the absence of a complete ban on inducements, we agree largely with the quality enhancing principles set out in the draft technical advice. However, we would like to point out that a stricter regime on third-party inducements should be accompanied by equally strong measures tackling conflicts of interest in closed-

architecture models, including variable remuneration and disclosure of costs. More specifically we point again to fixed-price transactions, as mentioned in chapter 2.14 of this consultation.

In particular, we propose to amend § 10 (i) as follows: "A fee, commission or non-monetary benefit may generally not be regarded as designed to enhance the quality of the relevant service to the client if, it is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business or originating from a very limited number of other market players"

Moreover, we are concerned that the two positive criteria of § 11 effectively establish a dual escape clause form the negative list. The existence of such an escape clause renders the quality enhancement test ineffective. We thus propose to fully drop the positive criteria of § 11.

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.

The evaluation of an adequate target market is crucial for investors as it defines the product universe independent advice can build on. We therefore support that ESMA specifies the requirements for advice to be considered as independent more precisely. However, we consider that further clarification is required on the "sufficient range of financial instruments available on the market".

In our view, the draft technical advice does not state clear enough that it should not be possible to exclude a certain type of (simple and low cost) financial instrument (e.g. shares or ETFs) completely from the target market. If this would be possible, the suitability assessment, especially with regard to the new and very welcomed obligation for firms to assess whether a less complex product with lower costs would better meet the client's profile, would be initially undermined.

Moreover, we propose to amend § 1 (i) (page 128) in a way that the diversified selection of financial instruments should be made with regard to type, issuer, and product provider (and not with regard to type, issuer, or product provider).

Finally, it is important to further add quality criteria to the identification of the sufficient range. A board range of second- or third-best products cannot be the ultimate criterion. The benchmark for independency should be best advice. We suggest to define criteria for market analysis that are able to identify the best possible products.

Q84. What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and nonindependent advice?

Acknowledging that MiFID2 explicitly allows firms to act as independent and non-independent advisor, we wish none less to articulate our concern that the coexistence of both forms of advice might lead to serious conflicts of interests between independent and non-independent advice units.

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?

We support the improvements proposed by ESMA regarding the suitability assessment.

However, the suitability test should be include a client specific risk-profile which should not only rely on qualitative criteria or categories but also on quantitative measures which grasp a clients' attitude to risk (e.g. the amount of money a client is willing to lose at maximum over a fixed time period)

Please find below an indicative example (translation from German source)

Assessment of attitude to risk: example

"The following statement on your individual risk attitude refers to the specific volume of investments under advice and should take into account your personal financial situation. Please indicate whether you agree to the following questions:

- The monetary value of the investments assets must be stable over the entire investment period.
- The monetary value of the investments assets may decrease (at maximum) by 5%, when there is a reasonable chance for recovery.
- The monetary value of the investment should be preserved at last at the end of the investment period.
- The monetary value of the investment assets may (in worst case) decrease by x % at the end of the investment period (I am aware of the fact that risks go a long with possible benefits).

Do higher losses than those stated adversely affect your ability to meet your ordinary expenditure? Y/N"

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?

The suitability reports must enable clients to understand why the product advised has been assessed as suitable. An explanation of the disadvantages of the recommended course of action should be given.

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?

Yes, we propose to explicitly include a requirement for investment advice to take the existing portfolio into account. The suitability report must explain how the advice given suits to the existing portfolio (e.g. risk diversification, fulfilling the different investment

targets). Moreover, we propose to clarify, with respect to clients' risk-bearing capacity, that any particular consumer has not only one and overall risk attitudes but different risk attitudes towards different investment targets.

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

Yes, we agree. However, it needs to be clear that regular market fluctuations are not sufficient to trigger changes in the instruments. Changing instruments is usually followed by costs from fees and commissions that create incentive form firms to advice changes more often than necessary. The draft technical advice should clearly state that the suitability reports should not lead to any disadvantage for the client.

2.24. Product intervention

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

We agree with the draft advice. It is important that criteria for product intervention remain non-exhaustive as we do not know what financial innovation could produce in the future. The implementing directive should not restrict the powers given to ESMA, EBA and the NCAs via the MiFIR.