EFAMA Reply to the European Commission Public Consultation on the Review of the Markets in Financial Instruments Directive (MiFID)  
Section 7 - Investor Protection and Provision of Investment Services

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General comments

EFAMA\(^1\) welcomes the Commission Consultation on the MiFID Review but regrets the inadequate length of the consultation period, particularly in view of the size of this consultation and the many different topics it covers. Furthermore, we think sufficient time should be taken by the Commission Services for careful drafting and legislation should not be rushed.

In reference to issues related to product distribution covered in Section 7, EFAMA expects that all proposals will be applied to all PRIPs and therefore will be the blueprint for the review of the Insurance Mediation Directive. However, we wish to reiterate our deep concerns that the Commission decision to use separate legislative instruments to implement the PRIPs initiative might lead to a lack of harmonized implementation for sales rules. We therefore encourage a close coordination of the work of the different Units in charge of PRIPs, MiFID Review and IMD Review to ensure that the implementation of the PRIPs initiative is coherent and harmonized not only at the principle level, but also in the details (Level 2). Furthermore, regulators must also ensure the same coherence and harmonized implementation in their technical standards and Level 3 work.

Detailed replies

Q84: 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.

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\(^1\) EFAMA is the representative association for the European investment management industry. It represents through its 26 member associations and 48 corporate members approximately EUR 13.5 trillion in assets under management, of which EUR 7.7 trillion was managed by approximately 53,000 funds at the end of September 2010. Just under 36,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds. For more information about EFAMA, please visit [www.efama.org](http://www.efama.org).
Almost all EFAMA members agree with the Commission proposal to extend certain MiFID standards to all financial intermediaries, to grant the same level of investor protection to all investors, regardless of the distribution channel they choose.

Furthermore, some of our members wish to point out that many intermediaries exempted from the MiFID scope of application at national level in accordance with Article 3 of MiFID are natural persons who cannot comply with all of MiFID’s requirements, in particular to rules on internal organisation and own capital of investment firms. Therefore, they clearly support the Commission’s suggestion for limiting the introduction of standards analogous to MiFID.

**Q85: 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.**

EFAMA fully agrees with the proposal to extend MiFID to the sale of structured deposits by credit institutions. Please also refer in this regard to our reply to the PRIPs consultation.

**Q86: 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.**

A very large majority of EFAMA members agree with the Commission’s suggestion for extending 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. The definition of execution of orders on behalf of clients should be modified to cover direct sales by banks and investment firms of their own financial instruments, in order to ensure the applicability of provisions.

**Q87: 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.**

EFAMA shall limit its comments to the classification of UCITS. Listed UCITS shall be classified like other UCITS.

**Q88: What is your opinion about the exclusion of the provision of “execution only” services when the ancillary service of granting credits or loans to the client (Annex I, section B (2) of MiFID) is also provided? Please explain the reasons for your views.**

**Q89: 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.**
EFAMA strongly disagrees with the Commission’s proposal to introduce in Art. 19(6) a differentiation among UCITS, dividing them into complex and non-complex; on the contrary, our members encourage the Commission to follow CESR’s proposal to maintain UCITS as non-complex instruments for the purposes of Article 19 (6). ²

Firstly, we are not aware of market failure with regard to execution-only transactions, as they are a small part of all transactions and most complaints by retail investors relate to unsuitable advice. We encourage the Commission to intervene only where there is a clear market failure and supporting cost/benefit analysis.

UCITS should continue to be categorized as non-complex, as they are conceived as retail products, are very strictly regulated and provide a high degree of investor protection. UCITS are also very liquid (redemptions possible usually daily, but at least twice a month), do not involve any liability exceeding the acquisition cost, provide a very high level of disclosure to retail investors (which will be further improved with the introduction of the KII under UCITS IV), are subject to stringent risk management rules and, above all, are designed to be well diversified. UCITS are also by far the most transparent financial instruments, and the recent introduction of the Key Investor Information Document (KIID) makes them even easier for retail investors to readily understand them. They therefore fulfil all the requirements of Art. 38 of the Level 2 Directive.

It could be damaging to the UCITS brand in the eyes of non-EU regulators if some of them were no longer considered non-complex, as they may be seen as unsuitable for retail investors. European investors’ confidence in UCITS might also be affected. We urge the Commission to evaluate very carefully the possible negative impact on a very successful global brand.

Lastly, a partial exclusion from the definition of non-complex instruments of some UCITS on the basis of underlying investment strategies or techniques would create serious problems for distributors and advisors, as they in turn would require detailed information on such strategies and techniques (for example on the use of derivatives), information which is not always available to the public and certainly not on a timely basis. The necessity to distinguish between complex and non-complex UCITS might also lead some intermediaries to stop accepting execution-only orders from clients altogether.

Complexity is not equal to risk. On the contrary, many of the UCITS features reduce risks for investors which are very high in “plain vanilla” financial instruments such as stocks and bonds. Risk reduction is also accomplished through strategies and techniques such as derivatives (for example when derivatives are used for hedging). It is unclear on what basis a distinction among UCITS could be made, but any criteria for differentiation should be applicable to other financial instruments as well. In particular, should a risk-based approach be considered by the Commission to distinguish among UCITS, it should be applied to all instruments under MiFID, and – as the discussion on the UCITS risk indicator shows – it would be a very difficult undertaking.

² Technical Advice to the European Commission in the context of the MiFID Review - Investor Protection and Intermediaries (CESR/10-859)
Q90: 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.

EFAMA strongly believes that the “execution only” regime should be retained and is not in favour of Option B. The continued existence of execution-only venues provides a valuable access to financial products where an investor does not consider that the cost of advice is acceptable. As we stated above, we are not aware of any market failure in this regard.

Q91: 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.

EFAMA supports measures that will encourage the quality of analysis conducted by advisers and the development of client confidence in advisers.

Almost all EFAMA members support the Commission’s suggestion under Point 1 that intermediaries providing investment advice should make clear the basis on which the advice is provided, to enhance transparency to investors and enable them to better assess the quality of the service received from an advisor.

However, a majority of our members disagrees with Point 2. They stress the key importance of good quality advice, but believe it can be provided through different channels and disagree that certain distribution channels should be stigmatized or considered to offer advice of lower quality simply due to a perceived lack of “independence” or if they do not consider a “sufficiently large number” of financial instruments. Already under current MiFID rules, fair recommendations can and must be expected in all distribution channels, regardless of ties with specific product providers. Broadening the basis of advice does not lead necessarily to better quality of advice.

Many EFAMA members, however, consider it reasonable that intermediaries should also base their advice on a fair analysis of the market, the providers and an appropriate number of financial instruments, in order to allow the client to make an informed decision.

Secondly, we wish to point out that the Commission has not defined the meaning of “independent and fair analysis”, or of “sufficiently large number”, although such terminology is key to its new proposals. We see a link to IMD, but such terms are not defined in the IMD either.

Furthermore, we do not consider it is necessary to ban acceptance of inducements by intermediaries claiming to provide an “independent and fair analysis” as long as details of such payments are clearly disclosed to clients in accordance with the applicable MiFID provisions. Evidence shows that a large majority of retail clients are unwilling to pay for advice. Measures aiming at banning inducements are likely to reduce access to advice for retail investors, in particular from independent advisors. It
could also affect the financial viability of many independent advisors. This appears detrimental to both investor protection and competition among distribution channels and is not a desirable outcome for the Commission’s proposals.

Q92: 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.

A majority of EFAMA members supports the proposal to oblige intermediaries to provide in writing to the client the underlying reasons for the advice provided.

Several members disagree, and consider that a firm must be able to give advice to clients efficiently and in a timely manner, without overly burdensome and costly administrative procedures. It should therefore be optional for the firm to specify in writing to the client the underlying reasons for the advice provided, or to it should be provided upon request. Some members consider that obliging intermediaries to provide in writing to the client the underlying reasons for the advice provided may be disproportionate when compared to the obligations of intermediaries distributing other types of products and services to the public.

Q93: 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.

Q94: 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.

A majority of EFAMA members strongly disagree with the Commission’s proposals to extend advisory duties to include a longer-term assistance, as the service of investment advice is related to a specific point of time as opposed to portfolio management where the management or advisory function constitutes an ongoing obligation. Investment advice per se under MiFID cannot entail any subsequent advisory duties, and clients wishing regular oversight of their portfolios and updates on suitability should engage a portfolio manager for the management of their portfolio. Alternatively, the Commission should introduce a new investment service.

Furthermore, even if provided in combination with the ancillary service of custody of assets, which is often the case, investment advice cannot be deemed to generate reporting obligations towards clients, which are exclusively attributable to the custody services over the investments.

From an economical point of view, mandatory repetition of the suitability test for each individual client on regular basis would significantly increase costs of investment advice. Our members also
point to the difficulties and cost of having to request information on a client’s personal circumstances on an annual basis, and the low likelihood of receiving them. Moreover, it is proposed that the annual confirmation should extend to suitability “in terms of risk diversification of the overall investments” (section 7.2.2., para. 3 letter c). Such a suitability assessment in relation to the entire client portfolio is not even required in respect of the initial advice and would definitely blur the borderline between investment advice and portfolio management.

Some EFAMA members, however, are of the opinion that an intermediary could offer an ongoing service or review to the client as proposed by the Commission, but it should be remunerated and there should be an agreement between the parties. The remuneration could be for example through the continued payment of retrocessions/trail commissions. To impose ongoing obligations upon all advisers is unrealistic, and the economics of the Commission’s proposal might lead to increased financial exclusion.

Q95: 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.

Q96: 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?

Q97: What is your opinion about obliging intermediaries also to provide clients with quarterly reporting on the evolution of the underlying assets of structured finance products? Please explain the reasons for your views.

Q98: 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.

Q99: 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.

The considerations presented in this section make clear that UCITS must not be treated as complex instruments for the purpose of MiFID. The Commission proposals in section 7.2.3. (in particular point b) regarding independent valuation by the intermediary) could not be applied to UCITS (or non-UCITS funds), except for the requirements in point a), which could be deemed fulfilled with the provision of a KID (or similar document). This might be applicable to other PRIIPs, for which a KIID will be required in the future.

The valuation and performance issues raised by the Commission in terms of OTC derivatives and structured products represent definitely no challenge to UCITS, which are valued on a daily basis and the information for which is readily available to investors.
With regards Q95, we support any measures targeted at enhancing the quality of product information provided to retail clients prior to an investment. However, we reiterate that the provision of KID for UCITS (or a KIID for PRIIPs) should be sufficient.

The reporting obligations of intermediaries on valuation and performance of structured products (Q96-98) go well beyond the concept of investment advice and many EFAMA members object to them (for reasons, see our reply to Q92-93). The proposed reporting on the evolution of the underlying assets in a structured product as a follow-up to investment advice even exceeds the obligations of asset managers who are specifically remunerated for the continuing monitoring of client portfolios.

The proposals in Q98 appears to be very unclear (“any material modification in the situation of the financial instruments”), and potentially imposing a high burden and high liability on custodians.

Lastly, EFAMA members do not see the need to apply such requirements to professional clients and eligible counterparties, who can request or seek necessary information and have sufficient knowledge to be able to evaluate it.

Q100: What is your opinion of, in the case of products adopting ethical or socially oriented investment criteria, obliging investment firms to inform clients thereof?

EFAMA members support enhancing transparency about ethical or socially responsible investments. However, any measures should be targeted only at products claiming to pursue certain ethically or socially oriented strategies, and not apply to all financial instruments.

As discussed in our response to the Commission’s consultation on PRIPs, the understanding of “ethically or socially oriented” investment criteria varies considerably across Europe. EFAMA has started working on a common understanding of responsible investing and will be happy to inform the Commission of the results in due time.

Q101: What is your opinion on the removal of the possibility to provide a summary disclosure concerning inducements? Please explain the reasons for your views.

EFAMA members are not in favour of eliminating the possibility to provide a summary disclosure regarding inducements. Current MiFID provisions already provide for the possibility for clients to request further information, and in practice those clients who are interested in detailed information already can do so.

Q102: Do you consider that additional ex-post disclosure of inducements could be required when ex-ante disclosure has been limited to information methods of calculation inducements? Please explain the reasons for your views.

EFAMA members believe that no additional ex-post disclosure should be required, but the client retains the possibility to request further information (see our reply to Q101). Ex-ante disclosure
must be substantial enough to provide an adequate information basis before conducting an investment.

Once the investment has been made, ex-post information is unlikely to be useful to the client, who will not (or cannot) change his/her decision. The focus of disclosure should remain ex-ante to be helpful to investors.

**Q103: 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.**

EFAMA members have strong concerns regarding the Commission proposals regarding banning of inducements in case of portfolio management and in case of advice provided on an independent basis.

**Portfolio Management**

EFAMA does not consider that inducements in case of portfolio management should be banned. However, they should either be rebated to the client (as already done in some cases) or the client should expressly consent to them being kept by the portfolio manager. It must be noted that inducements kept by portfolio managers reduce the fees charged to investors. Should they be banned, fees would have to be increased as a result.

A distinction should also be made between retrocessions paid by product producers and inducements such as soft commissions (broker research, financial analysis or pricing information systems which also qualify as inducements in accordance with the criteria of Article 26 MiFID Implementing Directive). Such non-monetary benefits are important assistance for asset managers in the process of taking investment decisions or transmitting orders for execution and are subject to MiFID’s requirement that they enhance the quality of the service. We are therefore of the opinion that soft commissions should in any case be permitted in relation to portfolio management.

**Advice provided on an independent basis**

EFAMA members disagree with the Commission’s proposals to ban advice provided on an “independent” basis.

Firstly, the Commission fails to define “independent advice”. Secondly, we strongly believe that any advice, whether “independent” or “restricted”, should be suitable and not influenced by inducements. Current MiFID rules already include such requirement, and if problems arise from their application, better enforcement is the answer, not a ban on inducements – especially not a ban limited to a specific type of advice. In practice, this will result in the provision of “independent advice” becoming less attractive in economic terms and intermediaries might be encouraged to offer their services on a different basis.
Furthermore, a large majority of retail clients are unwilling (or unable) to pay for advice. Measures aiming at banning inducements are likely to reduce access to advice for retail investors (especially those investing small amounts), and could also affect the financial viability of many independent advisors. This appears detrimental to both investor protection and competition among distribution channels. The Commission should be aiming at increasing investor choices for sources of advice, not limiting them.

As mentioned in our reply to Q91, although we are not in favour of banning inducements, we deem it important that details of such payments are clearly disclosed to clients in accordance with the applicable MiFID provisions.

Q104: 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.

EFAMA does not believe that the current client classification regime requires significant adjustments in the course of the current review. If a professional client considers itself to be lacking appropriate knowledge – in general or for specific products – it can (and should) request to be categorized as a retail client.

However, EFAMA wishes to bring to the Commission’s attention a matter regarding portfolio managers. We consider that in the upcoming MiFID review Art. 24 (2) of MiFID Level 1 should be amended to rectify the inconsistency between the protection granted to portfolio managers (classified as eligible counterparties) and the duty they are subject to in Art. 45 (1) of the implementing measures to act in the best interest of their client when placing orders for execution. Portfolio managers manage portfolios and funds on behalf of retail and/or professional clients, so the current level of protection does not match the underlying clients’ status.

As eligible counterparties, portfolio managers do not enjoy the protection of Best Execution rules according to Art. 24 of MiFID Level 1, while they have to act in the best interests of the client according to Art. 45 (1) of Level 2. The provisions in Art. 24 (2) of MiFID Level 1

“Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 19, 21 and 22.” should therefore be revised to foresee that MiFID firms providing the service of portfolio management shall have the right to require (at their discretion) a higher level of protection, without the need of agreement by the investment firms with whom they place orders for execution.

Q105: 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 might 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-standards 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 answer.

EFAMA agrees with the introduction of the broad conduct of business principles in the relationship with eligible counterparties proposed by the Commission in question a).

Regarding questions b) and c), our members consider that modifications to the current client categorisation rules are not necessary to exclude transactions in specific products. Entities classified as eligible counterparties lacking sufficient knowledge of financial products can anytime opt for treatment as a professional or even retail client; in line with Article 24 para. 2, 2nd subparagraph MiFID, such request can be confined to specific trades. See also our answer to Q104.

Furthermore, we believe that some local public authorities/municipalities do have the necessary knowledge and should not be precluded from making certain investment decisions. Member States should be responsible for deciding on the classification of local public authorities/municipalities.

Q106: 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.

We believe that the current presumption on sufficient knowledge and experience of professional clients should be retained. Adequate knowledge and experience in financial matters appears an indispensable prerequisite of professional clients’ operations. Moreover, professional clients are anytime allowed to request non-professional treatment and must be informed to this effect by an investment firm before any provision of services. Pursuant to the provisions in Annex II para I second-last subparagraph, it is the responsibility of a professional client “to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved”. In our view, this approach warrants sufficient protection to those – few – professionals who feel not sufficiently adept to conduct transactions of a certain type.

Q107: What is your opinion on introducing a principle of civil liability applicable to investment firms? Please explain the reasons for your views.

Q108: What is your opinion on 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

A very large majority of EFAMA members does not believe the introduction of a principle of civil liability is necessary, as civil liability principles are already applicable to investment firms at Member State level. A survey of existing civil liability provisions and a cost/benefit analysis should be undertaken before the Commission decides to pursue such changes to MiFID.
In any case, should the envisaged principle of civil liability be introduced for investment firms, we strongly request subjecting distribution of insurance products under IMD to equivalent standards, in order to not distort competition in the financial sector.

(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.

Many EFAMA members doubt that the data published by execution venues on execution quality will be helpful, as it might be not sufficiently granular or frequent for institutional investors. However, some of our members would welcome the availability of execution quality data, in order to make effective venue choices.

Q110: 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.

Some EFAMA members agree with the need to strengthen best execution policies by including more details, as in many cases broker execution policies simply restate MiFID rules.

(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.

EFAMA agrees that it should be clarified that firms dealing on own account with clients are fully subject to MiFID requirements. This is a crucial element of investor protection. A firm dealing on own account in order to execute a client trade must provide all the client protections which attach to the provision of this service.

(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.

EFAMA has no comment.

Q113: 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.

Almost all EFAMA members agree with the four modifications envisaged by the Commission.
However, EFAMA warns the Commission against imposing a general requirement for non-executive directors to be independent from the supervised company (as mentioned on page 66). Although independent expertise should be sufficiently provided for among non-executive directors or within a supervisory board, we believe that inside knowledge of a firm and professional experience closely linked to the supervised activities are also very useful to ensure adequate internal oversight.

Some of our members also encourage the Commission to maintain coherence with UCITS and AIFMD in all the modifications related to authorisation and organisational requirements.

**Q114: 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 views.**

Almost all EFAMA members agree. However, regarding the handling of client complaints, the compliance function should not be required to deal specifically with each and every complaint case. Depending on the internal allocation of responsibilities by investment firms, it should be sufficient for the compliance function to become involved in the general processing of complaints and to prepare periodic reports to the senior management.

**(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.**

**(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?**

EFAMA disagrees with the need to further detail organisational requirements to address the launch of new products, operations and services. We suggest that it would be proportionate to maintain the current framework and – if necessary – focus on its implementation. In any event, the matters raised in 7.3.3 b) and c) are the responsibility of senior management or the Board, not of the compliance function or risk management.

**Q117: Do you consider that specific organisational requirements could address the provision of the service of portfolio management? Please explain the reasons for your views.**

The suggested systems and procedures for ensuring implementation of the investment strategies agreed upon with clients are already common standard among asset managers and do not require regulatory enforcement.
Q118: Do you consider that implementing measures are required for a more uniform application of the principles on conflicts of interest?

It is not clear to EFAMA members what further implementing measures could be required with regard to conflicts of interest.

(119) What is your opinion of the prohibition of title transfer collateral arrangements involving retail clients' assets? Please explain the reasons for your views.
(120) What is your opinion about Member States be granted the option to extend the prohibition above to the relationship between investment firms and their non retail clients? Please explain the reasons for your views.
(121) Do you consider that specific requirements could be introduced to protect retail clients in the case of securities financing transaction involving their financial instruments? Please explain the reasons for your views.

EFAMA has no comment.

(122) Do you consider that information requirements concerning the use of client financial instruments could be extended to any category of clients?

It is already common business standard that the use of client financial instruments for securities financing transactions or other purposes takes place only on the basis of an explicit agreement with a client.

(123) What is your opinion about the need to specify due diligence obligations in the choice of entities for the deposit of client funds?

Some EFAMA members are of the opinion that there is no need to specify the due diligence obligation as the issue is already sufficiently covered by the rules on conflicts of interest, while others believe that it could help against contagion risk within a financial group, although there are other risks it does not help mitigate.

(124) Do you consider that some aspects of the provision of underwriting and placing could be specified in the implementing legislation? Do you consider that the areas mentioned above (conflicts of interest, general organisational requirements, requirements concerning the allotment process) are the appropriate ones? Please explain the reasons for your views.

Some EFAMA members have some concerns about underwriting and placing and would like to draw attention to the recently-published ‘Rights issue fees inquiry’ report (http://www.investmentuk.org/assets/files/research/201013-rifireport.pdf), which makes some recommendations in this area. We encourage the Commission to start a debate on this issue.
We hope our comments will be helpful to the Commission and remain at your complete disposal should you have any questions. The answers to the other sections of the consultation will be filed separately.

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