

ESMA Consults on Compliance Function for UK and EU Investment Firms

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On July 15, 2019, the **European Securities and Markets Authority** (ESMA) published a consultation paper (the Paper) setting out draft guidelines on aspects of UK and EU investment firms' compliance functions under MiFID II (the Draft Guidelines).

ESMA describes the compliance function as “a crucial function within firms, responsible for identifying, assessing, monitoring and reporting on the firm's compliance risk.”

The Draft Guidelines, which are set forth in Annex III to the Paper, are intended to enhance clarity and foster convergence in the implementation of certain aspects of the new MiFID II compliance function requirements, replacing and building on ESMA's 2012 guidelines, broadening the scope to cover changes to the compliance function introduced by MiFID II (as of January 3, 2018) and broadening the results of supervisory activities conducted by EU and UK regulators on the application of such expanded compliance functions, including:

- specific responsibilities in relation to MiFID II's product governance requirements.
- the compliance function operating as the complaints management function of the firm.
- the compliance function advising the management body of the firm on the firm's remuneration policy.

One of the Draft Guidelines would recommend that, taking into account the nature, scale and complexity of the business of an investment firm and the nature and range of investment services and activities undertaken in the course of that business, even though a firm may have compliance staff working on other control units at the same level, it should consider establishing and maintaining a core team within compliance whose sole area of responsibility is MiFID II compliance.

Another Draft Guideline would require that the compliance officer should demonstrate high professional ethical standards and personal integrity. ESMA states that “given the importance and nature of the role of the compliance function, [...] the compliance officer should be irreproachable in terms of ethics and personal integrity.” (This is essentially the standard against which all UK

compliance officers will be measured under FCA rules.)

ESMA suggests in the Paper that its content will be of most interest to MiFID II investment firms — as well as EU banks, Undertakings for the Collective Investment in Transferable Securities (UCITS) management companies and Alternative Investment Fund Managers (AIFMs).

The deadline for comments on the Draft Guidelines is October 15, 2019. ESMA intends to publish the final guidelines in the second quarter of 2020.

The Paper is available [here](#).

The 2012 Guidelines are available [here](#).

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