



European Securities and  
Markets Authority

# Guidelines

Guidelines on certain aspects of the MiFID compliance function requirements





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## I. Scope

### Who?

1. These guidelines apply to investment firms (as defined in Article 4(1)(1) of MiFID), including credit institutions that provide investment services, UCITS management companies<sup>1</sup>, and competent authorities.

### What?

2. These guidelines apply in relation to the provision of the investment services and activities listed in Section A and the ancillary services listed in Section B of Annex I of the Markets in Financial Instruments Directive (MiFID).

### When?

3. These guidelines apply from 60 calendar days after the reporting requirement date referred to in paragraph 10.

## II. Definitions

4. Unless otherwise specified, terms used in the Markets in Financial Instruments Directive and the MiFID Implementing Directive have the same meaning in these guidelines. In addition, the following definitions apply:

<i>Markets in Financial Instruments Directive (MiFID)</i>	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as subsequently amended.
<i>MiFID Implementing Directive</i>	Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
<i>compliance function</i>	The function within an investment firm responsible for identifying, assessing, advising, monitoring and reporting on the investment firm's compliance risk.
<i>compliance risk</i>	The risk that an investment firm fails to comply with its obligations under MiFID and the respective national laws, as well as the applicable standards set out by ESMA and competent authorities on these provisions.

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<sup>1</sup> These guidelines only apply to UCITS management companies when they are providing the investment services of individual portfolio management or of investment advice (within the meaning of Article 6(3)(a) and (b) of the UCITS Directive).



5. Guidelines do not reflect absolute obligations. For this reason, the word ‘should’ is often used. However, the words ‘must’ or ‘are required’ are used when describing a MiFID requirement.

### **III. Purpose**

6. The purpose of these guidelines is to clarify the application of certain aspects of the MiFID compliance function requirements in order to ensure the common, uniform and consistent application of Article 13 of the Markets in Financial Instruments Directive (MiFID), Article 6 of the MiFID Implementing Directive, and specified related provisions.
7. ESMA expects these guidelines to promote greater convergence in the interpretation of, and supervisory approaches to, the MiFID compliance function requirements by emphasising a number of important issues, and thereby enhancing the value of existing standards. By helping to ensure that firms comply with regulatory standards, ESMA anticipates a corresponding strengthening of investor protection.

### **IV. Compliance and reporting obligations**

#### **Status of the guidelines**

8. This document contains guidelines issued under Article 16 of the ESMA Regulation.<sup>2</sup> In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines.
9. Competent authorities to whom these guidelines apply should comply by incorporating them into their supervisory practices, including where particular guidelines are directed primarily at financial market participants.

#### **Reporting requirements**

10. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for any non-compliance. Competent authorities must notify ESMA within two months of publication of the translations by ESMA to ‘**compliance.388@esma.europa.eu**’. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available on the ESMA website.
11. Financial market participants are not required to report whether they comply with these guidelines.

### **V. Guidelines on certain aspects of the MiFID compliance function requirements**

12. As part of its responsibility for ensuring that the investment firm complies with its obligations under MiFID, senior management must ensure that the compliance function fulfils the requirements set out in Article 6 of the MiFID Implementing Directive.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

13. The guidelines should be read together with the proportionality principle as set out in Article 6(1) of the MiFID Implementing Directive. The guidelines apply to investment firms taking into account the nature, scale and complexity of their respective businesses, and the nature and range of investment services and activities undertaken in the course of their business.

## **V.I Responsibilities of the compliance function**

### **Compliance risk assessment**

#### **Relevant legislation: Article 6(1) of the MiFID Implementing Directive.**

##### *General guideline 1*

14. Investment firms should ensure that the compliance function takes a risk-based approach in order to allocate the function's resources efficiently. A compliance risk assessment should be used to determine the focus of the monitoring and advisory activities of the compliance function. The compliance risk assessment should be performed regularly to ensure that the focus and the scope of compliance monitoring and advisory activities remain valid.

##### *Supporting guidelines*

15. MiFID requires investment firms to establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the investment firm to comply with its obligations under MiFID. As part of this, the compliance function should identify the level of compliance risk the investment firm faces, taking into account the investment services, activities and ancillary services provided by the investment firm, as well as the types of financial instruments traded and distributed.
16. The compliance risk assessment should take into account the applicable obligations under MiFID, national implementing regulation and the policies, procedures, systems and controls implemented within the firm in the area of investment services and activities. The assessment should also take into account the results of any monitoring activities and of any relevant internal or external audit findings.
17. The compliance function's objectives and work programme should be developed and set up on the basis of this compliance risk assessment. The identified risks should be reviewed on a regular basis as well as ad-hoc when necessary to ensure that any emerging risks are taken into consideration (for example, resulting from new business fields or other changes in the investment firm's structure).

### **Monitoring obligations of the compliance function**

#### **Relevant legislation: Article 6(2)(a) of the MiFID Implementing Directive.**

##### *General guideline 2*

18. Investment firms should ensure that the compliance function establishes a monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services. The monitoring programme should establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

##### *Supporting guidelines*

19. The aim of a monitoring programme should be to evaluate whether the investment firm's business is conducted in compliance with its obligations under MiFID and whether its internal guidelines, organisation and control measures remain effective and appropriate.
20. Where an investment firm is part of a group, responsibility for the compliance function rests with each investment firm in that group. An investment firm should therefore ensure that its compliance function remains responsible for monitoring its own compliance risk. This includes where a firm outsources compliance tasks to another firm within the group. The compliance function within each investment firm should, however, take into account the group of which it is a part - for example, by working closely with audit, legal, regulatory and compliance staff in other parts of the group.
21. The risk-based approach to compliance should form the basis for determining the appropriate tools and methodologies used by the compliance function, as well as the extent of the monitoring programme and the frequency of monitoring activities performed by the compliance function (which may be recurring, ad-hoc and/or continuous). The compliance function should also ensure that its monitoring activities are not only desk-based, but that it also verifies how policies and procedures are implemented in practice, for example through on-site inspections at the operative business units. The compliance function should also consider the scope of reviews to be performed.
22. Suitable tools and methodologies for monitoring activities that could be used by the compliance function include (but are not limited to):
  - (a) the use of aggregated risk measurements (for example, risk indicators);
  - (b) the use of reports warranting management attention, documenting material deviations between actual occurrences and expectations (an exceptions report) or situations requiring resolution (an issues log);
  - (c) targeted trade surveillance, observation of procedures, desk reviews and/or interviewing relevant staff.
23. The monitoring programme should reflect changes to the investment firm's risk profile, which may arise, for example, from significant events such as corporate acquisitions, IT system changes, or re-organisation. It should also extend to the implementation and effectiveness of any remedial measures taken by the investment firm in response to breaches of MiFID.
24. Monitoring activities performed by the compliance function should also take into account:
  - (a) the business area's obligation to comply with regulatory requirements;
  - (b) the first level controls in the investment firm's business areas (i.e. controls by the operative units, as opposed to second level controls performed by compliance); and
  - (c) reviews by the risk management, internal control function, internal audit function or other control functions in the area of investment services and activities.
25. Reviews by other control functions should be coordinated with the monitoring activities performed by the compliance function while respecting the different functions' independence and mandate.

26. The compliance function should have a role in overseeing the operation of the complaints process and it should consider complaints as a source of relevant information in the context of its general monitoring responsibilities. This does not require compliance functions to have a role in determining the outcome of complaints. In this regard, investment firms should grant the compliance function access to all customer complaints received by the firm.

### **Reporting obligations of the compliance function**

#### **Relevant legislation: Article 6(3)(b) and 9 of the MiFID Implementing Directive.**

##### *General guideline 3*

27. Investment firms should ensure that the regular written compliance reports are sent to senior management. The reports should contain a description of the implementation and effectiveness of the overall control environment for investment services and activities and a summary of the risks that have been identified as well as remedies undertaken or to be undertaken. Reports must be prepared at appropriate intervals and at least annually. Where the compliance function makes significant findings, the compliance officer should, in addition, report these promptly to senior management. The supervisory function, if any, should also receive the reports.

##### *Supporting guidelines*

28. The written compliance report to senior management should cover all business units involved in the provision of investment services, activities and ancillary services. Where the report does not cover all of these activities of the investment firm, it should clearly state the reasons.
29. The following matters should be addressed in these written compliance reports, where relevant:
- (a) a description of the implementation and effectiveness of the overall control environment for investment services and activities;
  - (b) a summary of major findings of the review of the policies and procedures;
  - (c) a summary of on-site inspections or desk-based reviews performed by the compliance function including breaches and deficiencies in the investment firm's organisation and compliance processes that have been discovered and appropriate measures taken as a result;
  - (d) risks identified in the scope of the compliance function's monitoring activities;
  - (e) relevant changes and developments in regulatory requirements over the period covered by the report and the measures taken and to be taken to ensure compliance with the changed requirements (where senior management has not previously been made aware of these through other channels);
  - (f) other significant compliance issues that have occurred since the last report; and
  - (g) material correspondence with competent authorities (where senior management has not previously been made aware of these through other channels).

30. The compliance function should report to senior management, in a timely manner, on an ad-hoc basis when significant compliance matters have been discovered, such as material breaches of MiFID and the respective national requirements. The report should also contain advice on the necessary remedial steps.
31. The compliance function should consider the need for additional reporting lines to any group compliance function.
32. ESMA notes that some competent authorities require investment firms to provide them with compliance function reports on a regular or *ad hoc* basis. One competent authority also requires senior management to provide it with an annotated version of the report containing explanations of the compliance function's findings.<sup>3</sup> These practices provide competent authorities with first-hand insight into an investment firm's compliance activities, as well as any breaches of regulatory provisions.

### **Advisory obligations of the compliance function**

#### **Relevant legislation: Article 6(2) of the MiFID Implementing Directive.**

##### *General guideline 4*

33. Investment firms should ensure that the compliance function fulfils its advisory responsibilities including: providing support for staff training; providing day-to-day assistance for staff and participating in the establishment of new policies and procedures within the investment firm.

##### *Supporting guidelines*

34. Investment firms should promote and enhance a 'compliance culture' throughout the firm. The purpose of the compliance culture is not only to establish the overall environment in which compliance matters are treated, but also to engage staff with the principle of improving investor protection.
35. The investment firm needs to ensure that its staff are adequately trained. The compliance function should support the business units in the area of investment services and activities (i.e. all staff involved directly or indirectly in the provision of investment services and activities) in performing any training. Training and other support should focus particularly, but not exclusively, on:
  - (a) the internal policies and procedures of the investment firm and its organisational structure in the area of investment services and activities; and
  - (b) MiFID, the relevant national laws, the applicable standards and guidelines set out by ESMA and competent authorities, and other supervisory and regulatory requirements that may be relevant, as well as any changes to these.
36. Training should be performed on a regular basis, and needs-based training should be performed where necessary. Training should be delivered as appropriate – for example, to the investment firm's entire staff as a whole, to specific business units, or to a particular individual.

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<sup>3</sup> This description of specific practices of competent authorities aims to provide the reader with additional information on differing approaches of competent authorities without setting up additional requirements for investment firms or competent authorities (and thereby triggering the obligation under Article 16(3) of the ESMA Regulation to comply or explain).



37. Training should be developed on an on-going basis so that it takes into account all relevant changes (for example, new legislation, standards or guidelines issued by ESMA and competent authorities, and changes in the investment firm's business model).
38. The compliance function should periodically assess whether staff in the area of investment services and activities hold the necessary level of awareness and correctly apply the investment firm's policies and procedures.
39. Compliance staff should also provide assistance to staff from the operative units in their day-to-day business and be available to answer questions arising out of daily business activity.
40. Investment firms should ensure that the compliance function is involved in the development of the relevant policies and procedures within the investment firm in the area of investment services, activities and ancillary services. In this context, the compliance function should be enabled, for example, to provide compliance expertise and advice to business units about all strategic decisions or new business models, or about the launch of a new advertising strategy in the area of investment services and activities. If the compliance function's advice is not followed, the compliance function should document this accordingly and present it in its compliance reports.
41. Investment firms should ensure that the compliance function is involved in all significant modifications of the organisation of the investment firm in the area of investment services, activities and ancillary services. This includes the decision-making process when new business lines or new financial products are being approved. In this context, the compliance function should be given the right to participate in the approval process for financial instruments to be taken up in the distribution process. Senior management should therefore encourage business units to consult with the compliance function regarding their operations.
42. Investment firms should ensure that the compliance function is involved in all material non-routine correspondence with competent authorities in the area of investment services and activities.

## **V.II Organisational requirements of the compliance function**

### **Effectiveness of the compliance function**

#### **Relevant legislation: Article 6(3)(a) and 5(1)(d) of the MiFID Implementing Directive.**

##### *General guideline 5*

43. When ensuring that appropriate human and other resources are allocated to the compliance function, investment firms should take into account the scale and types of investment services, activities and ancillary services undertaken by the investment firm. They should also provide compliance staff with the authority necessary to exercise their duties effectively, as well as access to all relevant information concerning the investment services and activities as well as ancillary services undertaken.
44. The compliance officer should have sufficiently broad knowledge and experience and a sufficiently high level of expertise so as to be able to assume responsibility for the compliance function as a whole and ensure that it is effective.

##### *Supporting guidelines*

45. The number of staff required for the tasks of the compliance function depends to a large extent on the nature of the investment services, activities and ancillary services and other services provided by the investment firm. Where an investment firm's business unit activities are significantly extended, the investment firm should ensure that the compliance function is similarly extended as necessary in view of changes to the firm's compliance risk. Senior management should monitor regularly whether the number of staff is still adequate for the fulfilment of the duties of the compliance function.
46. In addition to human resources, sufficient IT resources should be allocated to the compliance function.
47. Where the investment firm establishes budgets for specific functions or units, the compliance function should be allocated a budget that is consistent with the level of compliance risk the firm is exposed to. The compliance officer should be consulted before the budget is determined. All decisions for significant cuts in the budget should be documented in writing and contain detailed explanations.
48. In ensuring compliance staff have access to the relevant information for their tasks at all times, investment firms should provide access to all relevant databases. In order to have a permanent overview of the areas of the investment firm where sensitive or relevant information might arise, the compliance officer should have access to all relevant information systems within the investment firm as well as any internal or external audit reports or other reporting to senior management or the supervisory function, if any. Where relevant, the compliance officer should also be able to attend meetings of senior management or the supervisory function. Where this right is not granted, this should be documented and explained in writing. The compliance officer should have in-depth knowledge of the investment firm's organisation, corporate culture and decision-making processes in order to be able to identify which meetings are important to attend.
49. In order to ensure that compliance staff have the authority required for their duties, the senior management of the investment firm should support them in the exercise of these duties. Authority implies possessing adequate expertise and relevant personal skills, and may be enhanced by the investment firm's compliance policy explicitly acknowledging the specific authority of the compliance staff.
50. All compliance staff should have at least knowledge of MiFID and of the respective national laws and all applicable standards and guidelines issued by ESMA and competent authorities on these provisions, as far as these are relevant for the performance of their tasks. Compliance staff should be regularly trained in order to maintain their knowledge. A higher level of expertise is necessary for the designated compliance officer.
51. The compliance officer should demonstrate sufficient professional experience as is necessary to be able to assess the compliance risks and conflicts of interest inherent in the investment firm's business activities. The required professional experience may have, amongst others, been acquired in operational positions, in other control functions or in regulatory functions.
52. The compliance officer should have specific knowledge of the different business activities provided by the investment firm. The relevant expertise required may differ from one investment firm to another, as the nature of the main compliance risks that firms face will differ. In respect of Article 5(1)(d) of the MiFID Implementing Directive, a newly employed compliance officer may therefore need additional specialised knowledge focused on the specific business model of the investment firm even if the person has previously been the compliance officer for another investment firm.

## **Permanence of the compliance function**

**Relevant legislation: Article 6(2)(a) of the MiFID Implementing Directive.**

### *General guideline 6*

53. MiFID requires investment firms to ensure that the compliance function performs its tasks and responsibilities on a permanent basis. Investment firms should therefore establish adequate arrangements for ensuring the responsibilities of the compliance officer are fulfilled when the compliance officer is absent, and adequate arrangements to ensure that the responsibilities of the compliance function are performed on an ongoing basis. These arrangements should be in writing.

### *Supporting guidelines*

54. The investment firm should ensure, e.g. through internal procedures and stand-in arrangements, that the responsibilities of the compliance function are fulfilled adequately during any absence of the compliance officer.
55. The responsibilities and competences as well as the authority of the compliance staff should be set out in a 'compliance policy' or other general policies or internal rules that take account of the scope and nature of the investment firm's investment services and activities. This should include information on the monitoring programme and the reporting duties of the compliance function as well as information on the compliance function's risk-based approach to monitoring activities. Relevant amendments to regulatory provisions should be reflected promptly by adapting these policies/rules.
56. The compliance function should perform its activities on a permanent basis and not only in specific circumstances. This requires regular monitoring on the basis of a monitoring schedule. The monitoring activities should regularly cover all key areas of investment services and activities taking into account the compliance risk associated with the business areas. The compliance function should be able to respond rapidly to unforeseen events, thereby changing the focus of its activities within a short timeframe if necessary.

## **Independence of the compliance function**

**Relevant legislation: Article 6(3) MiFID Implementing Directive.**

### *General guideline 7*

57. Investment firms should ensure that the compliance function holds a position in the organisational structure that ensures that the compliance officer and other compliance staff act independently when performing their tasks. The compliance officer should be appointed and replaced by senior management or by the supervisory function.

### *Supporting guidelines*

58. While senior management is responsible for establishing an appropriate compliance organisation and for monitoring the effectiveness of the organisation that has been implemented, the tasks performed by the compliance function should be carried out independently from senior management and other units of the investment firm. In particular, the investment firm's organisation should en-

sure that other business units may not issue instructions or otherwise influence compliance staff and their activities.

59. Where senior management deviates from important recommendations or assessments issued by the compliance function, the compliance officer should document this accordingly and present it in the compliance reports.

## **Exemptions**

### **Relevant legislation: Article 6(3) of the MiFID Implementing Directive.**

#### *General guideline 8*

60. Where an investment firm considers that it may not be proportionate for it to comply with the requirements set out in Article 6(3)(c) or (d) of the MiFID Implementing Directive, it should assess whether the effectiveness of the compliance function is compromised by the proposed arrangements. This assessment should be reviewed regularly.

#### *Supporting guidelines*

61. Investment firms should decide which measures, including organisational measures and the level of resources, are best suited to ensuring the effectiveness of the compliance function in the firm's particular circumstances. In deciding this, investment firms should take the following criteria (inter alia) into account:
- (a) the types of investment services, activities and ancillary services and other business activities provided by the investment firm (including those not related to investment services, activities and ancillary services);
  - (b) the interaction between the investment services and activities and ancillary services and other business activities carried out by the investment firm;
  - (c) the scope and volume of the investment services, activities and ancillary services carried out (absolute and relative to other business activities), balance sheet total and income of the investment firm from commissions and fees and other income in the context of the provision of investment services, activities and ancillary services;
  - (d) the types of financial instruments offered to clients;
  - (e) the types of clients targeted by the investment firm (professional, retail, eligible counterparties);
  - (f) staff headcount;
  - (g) whether the investment firm is part of an economic group within the meaning of Article 1 of the Seventh Council Directive of 13 June 1983 on consolidated accounts (Directive 83/349/EC);
  - (h) services provided through a commercial network, such as tied agents, or branches;

- (i) cross-border activities provided by the investment firm;
  - (j) organisation and sophistication of the IT systems.
62. Competent authorities may also find these criteria useful in determining which types of investment firms may benefit from the proportionality exemption under Article 6(3) of the MiFID Implementing Directive.
63. An investment firm may fall, for example, under the proportionality exemption if the performance of the necessary compliance tasks does not require a full-time position due to the nature, scale and complexity of the firm's business, and the nature and range of the investment services, activities and ancillary services offered.
64. While a compliance officer must always be appointed, it may be disproportionate for a smaller investment firm with a very narrow field of activities to appoint a separate compliance officer (i.e. one that does not perform any other function). Where an investment firm makes use of the exemption, conflicts of interest between the tasks performed by the relevant persons should be minimised as much as possible.
65. An investment firm that does not need to comply with all the requirements set out in Article 6(3) of the MiFID Implementing Directive under the proportionality principle, may combine the legal and compliance function. However, an investment firm with more complex activities or greater size should generally avoid such combination, if it could undermine the compliance function's independence.
66. Where an investment firm makes use of the proportionality exemption, it should record how this is justified, so that the competent authority is able to assess this.

### **Combining the compliance function with other internal control functions**

#### **Relevant legislation: Article 6(3) of the MiFID Implementing Directive.**

##### *General guideline 9*

67. An investment firm should generally not combine the compliance function with the internal audit function. The combination of the compliance function with other control functions may be acceptable if this does not compromise the effectiveness and independence of the compliance function. Any such combination should be documented, including the reasons for the combination so that competent authorities are able to assess whether the combination of functions is appropriate in the circumstances.

##### *Supporting guidelines*

68. Compliance staff should generally not be involved in the activities they monitor. However, a combination of the compliance function with other control units at the same level (such as money laundering prevention) may be acceptable if this does not generate conflicts of interests or compromise the effectiveness of the compliance function.
69. Combining the compliance function with the internal audit function should generally be avoided as this is likely to undermine the independence of the compliance function because the internal audit

function is charged with the oversight of the compliance function. However, for practical reasons (for example, decision making), and in certain circumstances (for example, in firms of only two persons), it may be more appropriate to have one person responsible for both functions. In this regard, firms should consider discussing the combination with the relevant supervisory authority. In addition, where this combination occurs, the firm must, of course, ensure that the responsibilities of each function are discharged properly (i.e. soundly, honestly and professionally).

70. Whether staff from other control functions also perform compliance tasks, should also be a relevant consideration in the determination of the relevant number of staff necessary for the compliance function.
71. Whether or not the compliance function is combined with other control functions, the compliance function should coordinate its activities with the second-level control activities performed by other units.

### **Outsourcing of the compliance function**

#### **Relevant legislation: Article 6 and 14 of the MiFID Implementing Directive.**

##### *General guideline 10*

72. Investment firms should ensure that all applicable compliance function requirements are fulfilled where all or part of the compliance function is outsourced.

##### *Supporting guidelines*

73. The MiFID outsourcing requirements for critical or important functions apply in full to the outsourcing of the compliance function.
74. The requirements that apply to the compliance function are the same whether or not any or all of the compliance function is outsourced; the responsibility for the fulfilment of the existing requirements rests with a firm's senior management.
75. The investment firm should perform a due diligence assessment before choosing a service provider in order to ensure that the criteria set out in Articles 6 and 14 of the MiFID Implementing Directive are met. The investment firm should ensure that the service provider has the necessary authority, resources, expertise and access to all relevant information in order to perform the outsourced compliance function tasks effectively. The extent of the due diligence assessment is dependent on the nature, scale, complexity and risk of the tasks and processes that are outsourced.
76. Investment firms should also ensure that when outsourced partially or fully, the compliance function remains permanent in nature, i.e. the service provider should be able to perform the function on an ongoing basis and not only in specific circumstances.
77. Investment firms should monitor whether the service provider performs its duties adequately, which includes monitoring the quality and the quantity of the services provided. Senior management is responsible for supervising and monitoring the outsourced function on an ongoing basis, and should have the necessary resources and expertise to be able to fulfil this responsibility. Senior management may appoint a specific person to supervise and monitor the outsourced function on their behalf.

78. Outsourcing of the compliance function within a group does not lead to a lower level of responsibility for the senior management of the individual investment firms within the group. However, a centralised group compliance function may, in some cases, provide the compliance officer with better access to information, and lead to greater efficiency of the function, especially if the entities share the same premises.
79. If an investment firm, due to the nature, size and scope of its business activities, is unable to employ compliance staff who are independent of the performance of services they monitor, then outsourcing of the compliance function is likely to be an appropriate approach to take.

### V.III Competent authority review of the compliance function

#### Review of the compliance function by competent authorities

##### Relevant legislation: Articles 7 and 17 of MiFID.

##### *General guideline 11*

80. Competent authorities should review how investment firms plan to meet, implement and maintain the MiFID compliance function requirements. This should apply in the context of the authorisation process, as well as, following a risk-based approach, in the course of on-going supervision.

##### *Supporting guidelines*

81. Article 7 of MiFID states that a competent authority shall not grant authorisation to an investment firm unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to MiFID. Accordingly, the competent authority should assess whether a firm's compliance function is adequately resourced and organised and whether adequate reporting lines have been established. It should require that any necessary amendments are made to the compliance function as a condition for authorisation.
82. Additionally, as part of the ongoing supervisory process, a competent authority should – following a risk-based approach – assess whether the measures implemented by the investment firm for the compliance function are adequate, and whether the compliance function fulfils its responsibilities appropriately. Investment firms are responsible for determining whether amendments to the resources and organisation of the compliance function are required due to changes in the business model of the investment firm. Competent authorities should also, as part of their ongoing supervision and following a risk based approach, assess and monitor - where and if appropriate - whether such amendments are necessary and have been implemented. The competent authority should provide a reasonable timeframe for the firm to make amendments. However, investment firms' amendments are not necessarily subject to approval by the competent authorities.
83. Some competent authorities license or approve the nominated compliance officer following an assessment of the qualifications of the compliance officer. This assessment may include an analysis of the compliance officer's curriculum vitae, as well as an interview with the designated person. This sort of licensing process may help to strengthen the position of the compliance function within the investment firm and in relation to third parties.
84. Other regulatory approaches impose the responsibility for the assessment of the compliance officer's qualification solely on the senior management of the investment firm. Senior management assesses

the prospective compliance officer's qualifications before appointment. Whether the investment firm properly complies with this requirement is then assessed within the general review of the firm's compliance with the relevant MiFID requirements.

85. Some Member States require investment firms to notify the competent authorities of the appointment and replacement of the compliance officer. In some jurisdictions, this notification must also be accompanied by a detailed statement on the grounds for the replacement. This can help competent authorities gain insight into possible tensions between the compliance officer and senior management which could be an indication of deficiencies in the compliance function's independence.
86. The above practices could be helpful to other competent authorities.<sup>4</sup>

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<sup>4</sup> This description of specific practices of competent authorities aims to provide the reader with additional information on differing approaches of competent authorities without setting up additional requirements for investment firms or competent authorities (and thereby triggering the obligation under Article 16(3) of the ESMA Regulation to comply or explain).