27 January 2017

London Stock Exchange Group

London Stock Exchange Group response to ESMA/EBA consultation on the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

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LSEG operates a broad range of international equity, ETF, bond and derivatives markets, including London Stock Exchange; Borsa Italiana; MTS (Europe's leading fixed income markets); EuroTLX SIM (bonds MTF) and Turquoise (a pan-European equities MTF). Through its platforms, LSEG offers market participants, including retail investors, institutions and SMEs unrivalled access to Europe's capital markets. The Group also plays a vital economic and social role, enabling companies to access funds for growth and development.

Executive Summary

LSEG welcomes the opportunity to comment on the consultation regarding the "Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU" (the "**Joint Guidelines**").

We consider that most of the scope provisions and the vast majority of guidance provisions in the Joint Guidelines are appropriate and sufficiently clear. There are however certain areas where we would like to share our thoughts and concerns with you. Our key considerations in this regard are summarised below.

On scope, we would appreciate it if the Joint Guidelines would recognise instances where an investment firm operates within the framework of a Shareholders Agreement under which shareholders have a right to nominate a certain number of members of the management body and where, in practice, the responsibility to assess the individual suitability of such nominated members of the management body is effectively a shared/joint responsibility between the investment firm and the shareholder in question.

LSEG supports the proportionality principle which we believe is critical in ensuring that governance arrangements are consistent with the risk profile and business model of all institutions to which the Joint Guidelines apply. As the application of the proportionality principle is linked to the concept of an institution's *"size, international organisation and nature, scale and complexity of activities"* it would be

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helpful if ESMA/EBA would provide clarification under what circumstances an institution would be deemed to be "significant". We consider that FCA's approach to determining significant investment firms, which is based on certain quantitative thresholds (further specified in our response to Q1), provides a workable solution that would lead to greater consistency across Member States.

On the topic of proportionality, we believe that it would be more appropriate if the guidance provisions concerning the development of a suitability policy would be limited to significant institutions only; similarly, it would appear to us that the documentation and notification exercise envisaged under paragraph 133 would be particularly burdensome for smaller investment firms and the guideline should not therefore capture non-significant institutions. We consider that the focus for smaller investment firms should be to implement and maintain (and to be able to demonstrate that they have implemented and maintain) properly documented and effective processes and procedures to ensure individual and collective suitability of all members of the management body.

In assessing skills of a member of the management body, we think that the skills specified in Annex II of the Joint Guidelines should be considered taking into account the different roles of members of the management body (e.g. CEO, executive director, non-executive director), bearing in mind that certain skills (such as "customer and quality oriented") may not necessarily be relevant to a member given his specific role.

Importantly, we encourage ESMA and EBA to keep this consultation closely linked to ESMA's consultation paper on "Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers" (the "**ESMA Guidelines**") which closed on 5 January 2017. In particular with regard to the MiFID II activity listed in Section A, paragraph (8) of Annex I of MIFID II ("operation of an MTF"), we would like to point out the peculiar situation that MTFs operated by MiFID investment firms will be subject to the Joint Guidelines, whilst MTFs operated by market operators (i.e. RIEs that also operate an MTF) will be subject to the ESMA Guidelines. We strongly believe that a tight coordination and alignment between the Joint Guidelines and the ESMA Guidelines in this regard is needed in order to ensure that both sets of guidelines are consistent with the risk profile and business model of the trading venue/MTF, regardless of the legal form of the operating company (investment firm vs market operator). While we acknowledge that the proportionality principle will allow smaller investment firms to make appropriate adjustments in the development and implementation of policies and processes under the Joint Guidelines, such flexibility may not be sufficient for those investment firms that are authorised only to operate an MTF, are mono product and not significant. Article 95(1) of Regulation (EU) No 575/2013 ("**CRR**") expressly recognises as a separate category those investment firms that are not authorised to provide investment services and activities other than the operation of an MTF. This category has a limited authorisation and a limited risk exposure so ad hoc prudential requirements are justified. If the investment firm expands its activity, a new authorisation is required so the total risk exposure is under control. Against this background we think that it would be appropriate not to extend the application of certain guidance provisions in the Joint Guidelines to this type of investment firm. Moreover, if compliance for investment firms operating MTFs is significantly more onerous under the Joint Guidelines than is the case for market operators operating MTFs under the ESMA Guidelines, then this would put investment firms at a disadvantage and disincentivise them from operating which is undesirable and not intended by the guidelines.

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We have proposed some minor amendments where we consider that the Joint Guidelines are slightly ambiguous as currently drafted.

Contact

If ESMA/EBA would like to discuss any of our responses in more detail, please do not hesitate to contact one or more of the following:

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Q1: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines to either the management or supervisory function?

As pointed out by ESMA/EBA, Member States' company law usually provides for a unitary and/or a dual board structure and the Joint Guidelines are intended to embrace all existing governance structures. In relation to unitary structures we consider that the term "management body in its management function" effectively refers to the executive members of the board whereas the term "management body in its supervisory function" should be understood to refer to the Chairman and the non-executive directors collectively; we would be grateful if ESMA/EBA could provide clarification along such/similar lines. We appreciate that the Joint Guidelines distinguish in certain areas between the "management function" and the "supervisory function"; we think that this is helpful and the guidelines would benefit if the distinction was applied more often throughout the document.

As ESMA/EBA will appreciate, the scope of Q1 is very broad and we have limited our response to a broad comparison of the Joint Guidelines with company law legislation in certain jurisdictions that are relevant from an LSEG point of view.

On that basis and with regard to the Italian legal framework, the Joint Guidelines appear not to conflict with what the national law and regulations provide for investment firms (under the Consolidated Financial Law and Bank of Italy implementing regulations). We would however like to point out that the guidelines governing the process to assess the suitability of members of the management body (both individually and collectively) which are similar to the Joint Guidelines are currently only in place for banks and not for investment firms (cf. Bank of Italy Circolare 285).

The Joint Guidelines appear to be broadly consistent with the provisions under the UK Companies Act 2006 (the **"Act"**) and the UK Corporate Governance Code (the **"Code"**) in relation to boards, directors' responsibilities and duties. In the UK, the Code applies to listed companies only. All companies with a Premium Listing of equity shares in the UK are required under the Listing Rules to report on how they have applied the Code in their annual report and accounts. The Code contains broad principles and more specific provisions. Listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code's provisions or - where they have not - to provide an explanation; the Code recognises that

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smaller listed companies may judge that some of the Code's provisions are disproportionate or less relevant. We note the contents of Title 1, Part 4 of the Joint Guidelines ("Application of the proportionality principle") which clarifies that, in applying the Joint Guidelines for purposes of developing and implementing policies and processes, institutions should take into account their size, internal organisation as well as the nature, scale and complexity of their activities. In practice, this means that firms that fall within the definition of "significant institutions" would need more sophisticated policies and processes whilst smaller institutions may decide that a more restrictive application of the Joint Guidelines is merited for reasons of proportionality.

We do, however, feel that the definition of "significant institutions" leaves some degree of uncertainty to the extent that it includes, as appropriate, other CRD-institutions, financial holding companies or mixed financial holdings companies which have been determined "significant" by their relevant competent authority based on an assessment of the institutions' size, internal organisation and the nature, the scope and the complexity of their activities. Whilst Article 131 of CRD IV sets out the criteria to be applied for purposes of determining an institution as systemically important (which has also led to the development of the 2012 EBA "Guidelines on the suitability of members of the management body and key function holders"), no criteria have been developed to determine under what circumstances an institution should be deemed to be significant on the basis of its size, internal organisation, nature, scope, and complexity of its activities. In the UK, the Financial Conduct Authority (**"FCA"**) applies an objective definition with pre-defined quantitative thresholds to determine which investment firms are significant for the purposes of Article 91 (and others) of CRD IV. Effectively, a significant firm is defined to be a firm that meets, at any time, one or more of the following conditions (see IFPRU 1.2.3R):

(1) its total assets exceeds £530 million;
(2) its total liabilities exceeds £380 million;
(3) the annual fees and commission income it receives in relation to the regulated activities carried on by the firm exceeds £160 million in the 12-month period immediately preceding the date the firm carries out the assessment under this rule on a rolling basis;
(4) the client money that it receives or holds exceeds £425 million; and
(5) the assets belonging to its clients that it holds in the course of, or connected with, its regulated activities exceeds £7.8 billion.

We consider that such approach works well and in order to ensure consistency across the EEA, there would be much benefit if the draft Joint Guidelines could provide clarity regarding the criteria/conditions under which an institution would be deemed "significant" in this regard.

***Q2:* Are the subject matter, scope and definitions sufficiently clear?**

We consider that the subject matter and scope as set out in paragraphs 5-12 of the consultation paper are sufficiently clear.

As for the definitions, we have a couple of concerns that we would like to share with you. We think that the definition of "significant institutions" would benefit from some clarification to enable institutions across the EEA to determine under what circumstances an institution would be deemed "significant"

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on the basis of its size, internal organisation, nature, scope and complexity of its activities (please refer to our response to Q1 above for further detail).

We would also like to flag that whilst the definition of the term “Member” is clear as such, the term “Member” is often used interchangeably in the UK with the term “shareholder”. Our preferred approach would be for the Joint Guidelines to refer consistently to a “member of the management body” which could be defined to include both a proposed or appointed member of the management body.

On another point, we consider that it would be extremely helpful if, for ease of reference, the Joint Guidelines could provide links to the referenced Articles in CRD IV.

Q3: ***Is the scope of assessments of key function holders by CRD-institutions appropriate and sufficiently clear?***

Paragraph 31 of the Joint Guidelines confirms that a key function holder’s reputation, honesty, integrity, knowledge, skills and experience should be assessed against the same criteria as those that apply in connection with a suitability assessment of members of the management body. In this regard the scope of the assessment for key function holders appears to be appropriate and sufficiently clear.

LSEG would however welcome it if the Joint Guidelines could be extended to those instances where an investment firm operates within the framework of a Shareholders Agreement or other governance arrangements under which shareholders have a right to nominate a certain number of members of the management body and where the onus is on each shareholder to vouch for the employee representing its shareholding. Whilst the investment firm’s responsibilities around ensuring the suitability of individual members of the management body and of the management body collectively are well understood, it would be helpful if the Joint Guidelines recognised that in practice the decision making and vetting process may be a joint/shared responsibility between the investment firm and the shareholder in question.

Q4: ***Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why? Institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.***

Yes, we broadly agree with the proportionality principle and that it will assist smaller investment firms with their implementation and ongoing adherence to the Joint Guidelines.

Q5: ***Do you consider that a more proportionate application of the guidelines regarding any aspect of the guidelines could be introduced? When providing your answer please specify which aspects and the reasons why. In this respect, institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.***

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The Joint Guidelines envisage that institutions adopt and maintain a suitability policy covering at least the aspects specified in paragraph 103 of the Joint Guidelines; CRD-institutions should (i) identify, on a risk-based approach, in their suitability policy those positions considered to be key function holders in addition to the heads of internal control functions and the CFO (where they are not part of the management body) and (ii) include the processes for the selection and appointment of key function holders. This will have cost implications for smaller investment firms as they do not have the same resources as larger firms that typically benefit from large legal and/or compliance departments with dedicated resource to deal with governance arrangements. Achieving full compliance with the Joint Guidelines in this regard may result in smaller firms having to employ additional heads and/or to seek external advice and assistance which may be disproportionately costly.

We consider that a balance needs to be struck regarding substance and form of the policy documentation process. Clearly, the most critical aspect is that firms implement and keep up-to-date processes and procedures to ensure initial and continuing suitability; these processes and procedures should be appropriately documented internally and must be adhered to and enforced in practice. Whilst the proportionality principle will allow smaller firms to make adjustments "when developing and implementing policies", we query whether it would be more appropriate to limit the development of a suitability policy to significant institutions only whilst continuing to require consolidating CRD-institutions to ensure that a group-wide policy for the assessment of suitability of all members of the management body and key functions holders is implemented and complied with in all subsidiaries within the scope of prudential consolidation (see paragraph 106 of the Joint Guidelines).

***Q6:* Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?**

As already mentioned under Q2 above, it would be extremely helpful if, for ease of reference, paragraphs 45-53 of the Joint Guidelines could provide links to the referenced Articles in CRD IV.

We think that the drafting in paragraph 50 would be clearer (and more in line with paragraph 49) if the following amendment was made: *"When multiple institutions within the same group hold qualifying holdings, the directorships in all qualifying holdings should be counted, (…), as one ~~separate~~ single directorship. That single directorship in qualifying holdings counts as a separate single directorship, (…)".*

We further consider that paragraph 53 should be extended to reference specifically educational institutions as these may not necessarily be within scope of other "not-for-profit organisations".

***Q7:* Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?**

Yes, broadly, we consider that the Joint Guidelines are sufficiently clear but we would like to flag the following areas which would benefit from further clarification.

Paragraph 57 refers to the non-exhaustive list of relevant skills in Annex II of the Joint Guidelines. We believe that institutions should apply the specified skills taking into account the different roles of the members of the management body such as CEO, executive directors and non-executive directors.

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Some skills (e.g. customer and quality oriented, leadership) may not be essential for certain members of the management body (e.g. non-executive members). We think that adding the words *"taking into account the specific roles of the member of the management body"* at the end of paragraph 57 would help clarify this point.

We further suggest that paragraph 66 should recognise/record (either as an addition to 66(c) or as a separate bullet point) the importance of specialist technical knowledge of financial products.

With regard to the requirement of independence of mind (paragraphs 74-81), the Joint Guidelines flag a number of situations that institutions should give consideration to because these situations can give rise to a conflict of interest for the member of the management body. It would be helpful if ESMA/EBA would clarify whether being a group executive and a non-executive director and employee would be considered to create a conflict of interest situation. Our view is that a professional or economic relationship with the institution's parent institution or any subsidiaries (paragraph 77, letter a)) is a common situation for executive directors (i.e. CEO). Such situations should not be considered by themselves to give rise to a situation of conflict of interest impacting the independence of mind of an executive director, as long as the director promotes the interest of the company. The guidelines should also recognise that a number of investment firms are part of groups. Participation in other group companies does not necessarily impact a director's ability to act independently as a member of the board of the investment firm.

***Q8:* Are the guidelines within Title III regarding the human and financial resources for training of members of the management body appropriate and sufficiently clear?**

While we understand ESMA's/EBA's reasoning on induction and training of members of the management body, we find the proposed Joint Guidelines too prescriptive and too burdensome. LSEG provides all staff with extensive mandatory training. We would consider adding specific management body training on a yearly basis, for example – but we do not believe that ESMA/EBA should suggest tailor-made, individual trainings for board members. We believe that each entity should be left to decide what the appropriate level of training is for board members. We would also welcome it if the Joint Guidelines recognised that there might be circumstances in which the induction and training of members of the management body may not be completed within a 1 month period of them taking up their position. The proposed time limit might be particularly challenging in relation to appointments to large boards with 25+ members.

We reiterate our comment on paragraph 57 – we believe that institutions should apply the list of skills set out in Annex II taking into account the different roles of members within the management body. We also note that, as stated in paragraph 65 of the Joint Guidelines, all areas of knowledge required for the institution's business activities should be covered by the management body collectively (and not individually), with sufficient expertise among all the members.

In the light of the above, paragraph 84 is slightly ambiguous as drafted (*"In any case, a member should fulfill all knowledge and skills requirements as set out in section 7…"*) as it could be understood to mean that each member of the management body individually should meet "all" knowledge and skills requirements. We think that it would be clearer if the sentence said *"In any case, a member should fulfill the ~~all~~ relevant knowledge and skills requirements as set out in section*

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7…". Equally, we do not believe that ESMA/EBA should suggest tailor-made, individual trainings for board members. We believe that each entity should be left to decide what the appropriate level of training is for board members and support induction and training policies which set out an entry level knowledge for all the members of the management body, based on the specific business activity of the institution.

***Q9:* Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?**

While LSEG is fully supportive of diversity as a key principle, we feel that targets and quotas may not be the best approach to board recruitment. We consider that boards should seek to have the right balance of skills and experience having regard to diversity including gender. Additionally geographical provenance is not always relevant – for example, while diversity in terms of nationality might be key for multinational investment firms, it would make little or no sense to apply the same nationality diversity criteria to smaller/local firms. We consider that the proportionality principle will be particularly helpful for investment firms to strike the right balance here.

We further note the guidance given in paragraph 120 of the Joint Guidelines which states that the recruitment process should where possible take into account the diversity requirements of the Joint Guidelines, but *"institutions should not however recruit members of the management body with the sole purpose of increasing diversity to the detriment of the functioning and suitability of the management body collectively, or at the expense of the suitability of individual members of the management body"*. LSEG agrees with this approach.

***Q10:* Are the guidelines within Title V regarding the suitability policy and governance arrangements appropriate and sufficiently clear?**

Please refer to our response to Q5 above so far as the suitability policy is concerned.

With regard to paragraph 123 of the Joint Guidelines, we query whether such guideline is within scope of the mandate given to ESMA/EBA under Article 9 MiFID II and Article 91(12) CRDIV. In any case, we would appreciate it if ESMA/EBA would carve out from the guidance provision under paragraph 123 small investment firms with no complex internal organisation and limit application of the guidelines to significant institutions only. The guidelines relating to independence of mind should be appropriate and sufficient to "facilitate constructive challenge discussion" in such small firms. This approach would also help avoid inconsistencies that would otherwise arise if a non-significant investment firm operating an MTF was subject to the guideline whereas a market operator operating an MTF was not subject to an equivalent guideline under the ESMA Guidelines. Should ESMA/EBA decide not to limit the application of the guideline to significant institutions only, we recommend a clarification regarding the minimum number of independent directors that small institutions would be expected to have (i.e. at least one for not significant investment firms).

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***Q 11:* Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?**

Paragraphs 133 and 134 of the Joint Guidelines will place an additional administrative burden on smaller investment firms in particular. This burden is likely to sit with the compliance and corporate functions, and may result in smaller firms having to employ additional heads and/or to seek external advice and assistance which may be disproportionately costly. Again, we consider that a balance needs to be struck regarding substance and form of the documentation process and would ask that ESMA/EBA are mindful of proportionality considerations. The most critical aspect is that firms have in place effective processes and procedures to assess suitability for new members of the management body, including the institution's assessment of the collective suitability.

We agree with and fully support the guidance provided in paragraph 141 which gives institutions the option to undertake collective suitability assessments by using either the firm's own appropriate methodology or the suitability matrix set out in Annex I of the Joint Guidelines.

We understand and agree that the on-going monitoring and re-assessment of the individual and collective suitability of the members of the management body are necessary in order to achieve compliance with Article 88(2)(b) of CRD IV and Article 9(1) of MiFID II. However, it appears to us that some aspects listed in paragraph 144 of the Joint Guidelines will be difficult to assess in practice; in particular we believe that demonstrating compliance with paragraph 144(b) could present a challenge for institutions. Our preferred approach would be for the guidelines to focus on the directors' duty to exercise independent judgment and to avoid conflict of interests.

***Q12:* Are the guidelines with regard to the timing (ex-ante) of the competent authority's assessment process appropriate and sufficiently clear?**

As currently drafted, paragraph 166 of the Joint Guidelines says that competent authorities should set out a maximum time period for their assessment of suitability *"which should not be less than 3 months and not exceed four months"* from the point of time that a complete assessment application or notification is provided by the institution to the competent authority. The existing wording is slightly ambiguous in that it could be read to mean that competent authorities may not take less than 3 months to assess suitability/communicate their decision. This would be counter-productive and does not reflect existing regulatory practice. We believe that paragraph 166 is intended to say that the maximum period for consideration to be specified by competent authorities should be somewhere between 3 to 4 months.

Against this background we propose that paragraph 166 is rephrased along the following lines: *"Competent authorities should set out a maximum time period for their assessment of suitability which should be a maximum period between 3 and no more than four months ~~should not be less than 3 months and not exceed four months~~ (…). The decision of the competent authority should be taken as soon as practicable within the maximum period, (…)"*.

We do not have any other comments.

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***Q13:* Which other costs or impediments and benefits would be caused by an ex-ante assessment by the competent authority?**

We note that the current regulatory approach between competent authorities in relation to suitability assessments differs. Whilst in the UK the competent authorities undertake *ex-ante* assessments of suitability unless there are duly justified reasons for an *ex-post* assessment (e.g. an individual may perform certain functions temporarily for up to 12 weeks to provide cover for temporary or reasonably unforeseen absences), investment firms in France are required to notify the relevant competent authority of appointments or renewal of appointments following which the authorities will make a determination; competent authorities in Italy so far do not currently perform (or validate) any suitability assessment at all, whether *ex-ante* or *ex-post*. We would prefer a neutral approach, as is the case under the existing 2012 EBA guidelines, in order to leave the competent authorities of each jurisdiction with the necessary flexibility to adopt the approach they consider the most appropriate.

***Q14:* Which other costs or impediments and benefits would be caused by an ex-post assessment by the competent authority?**

Again, we note that existing regulatory approaches differ between jurisdictions.

Arguably, in the case of an *ex-post* assessment of suitability, the potential benefits of being able to appoint an individual to be a member of the management body a lot faster would be outweighed in practice by the complexities, costs and reputational damage associated with any subsequent removal of a member from the management body where the competent authority determines *ex-post* that the member is unsuitable. On the other hand, we consider that a time period for the *ex-ante* assessment ranging from 3 months to 12 months (where the application forms part of an application for authorisation to take up the business) is too long and unworkable in practice; business needs would be better served if initial and on-going assessments of individual suitability and collective suitability of the management body were the sole responsibility of the institution and their shareholders.

As already mentioned under Q13 above, we propose that the Joint Guidelines take a neutral approach in this regard and give the competent authorities the option to implement an assessment process as they consider appropriate.

***Q15:* Are the guidelines within Title VII regarding the suitability assessment by competent authorities appropriate and sufficiently clear?**

Except for the drafting point raised in our response to Q12 above, we consider that the guidelines within Title VII are sufficiently clear.

LSEG would welcome it if the Joint Guidelines encouraged competent authorities also to communicate a positive suitability decision rather than propose that silence may be deemed to be a positive decision. In any event we would propose to re-phrase the current drafting of paragraph 174 along the following lines to avoid any misunderstanding in this context:

“Competent authorities should inform institutions at least of a negative decision taken as soon as possible and in any even within the maximum period for the assessment. A positive decision may be

deemed to be taken by ~~silent~~ silence, where the maximum period for the assessment is reached and the competent authority has not ~~taken~~ within this period informed the relevant institution of a negative decision".

***Q16:* Is the template for a matrix to assess the collective competence of members of the management body appropriate and sufficiently clear?**

We understand that the ESMA/EBA proposed Annex I is not compulsory. It is important that institutions are given sufficient flexibility to assess collective competence/suitability of the management body in a way most appropriate for the size, scale and nature of their business. Therefore it is important that the use of the Annex I matrix remains optional.

***Q17:* Are the descriptions of skills appropriate and sufficiently clear?**

Please refer to our response to Q7.

Regarding paragraph 57 of the Joint Guidelines, we believe that institutions should apply the list of skills set out in Annex II taking into account the different roles of members of the management body, i.e. executive director, CEO or non-executive director. Some skills (i.e. customer and quality oriented, leadership) may not be essential for certain members of the management body (e.g. non-executive members).

***Q18:* Are the documentation requirements for initial appointments appropriate and sufficiently clear?**

Please refer to our response to Q11.

We agree with the need for documentation to demonstrate the suitability of members of the management body. We note that institutions may choose the way how they wish to collect such information from members of the management body in line with the guidance provisions in paragraphs 135 and 136 of the Joint Guidelines, which we understand would include by means of self-certification.

Paragraphs 133 and 134 of the Joint Guidelines will place an additional administrative burden on smaller investment firms in particular. This burden is likely to sit with the compliance and corporate functions, and may result in smaller firms having to employ additional heads and/or to seek external advice and assistance which may be disproportionately costly. Again, we consider that a balance needs to be struck regarding substance and form of the documentation process and would ask that ESMA/EBA are mindful of proportionality considerations. The most critical aspect is that firms have in place effective processes and procedures to assess suitability for new members of the management body, including the institution's assessment of the collective suitability.

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<u>Q19:</u> What level of resource (financial and other) would be required to implement and comply with the Guidelines (IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training. When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

We have no comments.

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