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ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS
LES PROFESSIONNELS DE LA BOURSE & DE LA FINANCE

FÉDÉRATION BANCAIRE FRANÇAISE

Retail Investment Strategy (RIS)

AMAFI and FBF amendments to
Directive (EU) 2014/65/EU and Regulation (EU) 1286/2014

September 2023

EN

AMAFI and FBF amendments to MiFID II part 1 – Inducements

Preliminary remarks

AMAFI and FBF are strongly opposed to the European Commission proposal to extend the ban on inducements beyond what is already provided for by MiFID II as the proposal, although presented as partial, will in practice lead to a total ban.

This project raises crucial issues for retail investors, particularly in terms of their access to financial products and appropriate advice. It would be deeply regrettable if the Retail Investment Strategy were to become an obstacle to the very objective for which it was designed: increasing European citizens' participation in capital markets to finance the green and digital transitions. It would also be particularly detrimental at a time when it is vital to increase the financing capacity of European economies.

In addition to the deletion of Article 24a (inducements), AMAFI and FBF propose alternative solutions in order to improve transparency, prevent potential conflicts of interest and ensure a high standard of service for investors. Our proposals are presented following the order of the Articles of the Directive.

Amendment 1

Proposal for a directive
Article 1(12) (i) of omnibus directive modifying Articles 24(8), (9) and (9a) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF Amendment*
(i) paragraphs 8, 9 and 9a are deleted;	***Deleted.***

Justification

The new proposal of the EC deletes Articles 24(8), (9) and (9a) of MiFID II.

AMAFI and FBF strongly oppose the deletion of the former possibility afforded under MiFID II to receive remunerations and transfer them in full to clients in relation to services for which a ban on inducements applies (at this stage, portfolio management and independent advice – Article 24(8)). As such transfer implies that the investment firm does not benefit from the inducement, the potential conflicts of interest that the rules on inducements intend to mitigate are nonexistent. Therefore, the rationale for this proposal is missing and the current MiFID II provision to "not accept and retain" inducements should be kept. If not, clients provided with the service of portfolio management or independent advice would no longer have access to any products embedding inducements which may significantly reduce the range of financial instruments available to them.

In return for the deletion of Article 24a on inducements and Article 24(1a) on the "best interest of the clients", AMAFI and FBF propose to reinstate the provisions of Article 24(9) of MiFID II relating to "service quality enhancement" obligations which, notably require that additional services be provided to the client by the investment firm when it is remunerated by commissions.

Finally, AMAFI and FBF propose to reinstate the provisions of Article 9(a) relating to research (to recall, these provisions were added by the "Quick Fix" directive). This provision allows the rebundling of research for stocks with a capitalization of less than €1bn.

Amendment 2

Proposal for a directive
Article 1(12) (e) (i) of omnibus directive modifying Article 24(4) (c) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
(c) the information on costs and charges as referred to in Article 24***b***;	(c) the information on costs and charges as referred to in Article 24***a***;

Justification

Change of numbering due to deletion of article 24a on inducements.

Amendment 3

Proposal for a directive
Article 1(12) (j) of omnibus directive modifying Article 24(13) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article**,** Article 24a ***and Article 24b*** when providing investment or ancillary services to their clients, including:	The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article ***and*** Article 24a when providing investment or ancillary services to their clients, including:

Justification

Change of numbering due to deletion of article 24a on inducements.

Amendment 4

Proposal for a directive
Article 1(13) of omnibus directive

Text proposed by the Commission	*AMAFI and FBF amendment*
(13) the following Articles 24a, 24b, 24c ***and 24d*** are inserted:	(13) the following Articles 24a, 24b and 24c are inserted:

Justification

Change of numbering due to deletion of article 24a on inducements.

Amendment 5
Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24a to MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
1. Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client.	***Deleted.***
2. Member States shall ensure that investment firms, when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any financial instrument on which the firm provides such execution or reception and transmission services, or any person acting on behalf of that third-party.	
3. Paragraph 2 shall not apply to investment firms, when providing investment advice on a non-independent basis relating to one or more transactions	

of that client covered by that advice.

4. Paragraph 2 shall not apply to fees or any other remuneration received from or paid to an issuer by an investment firm performing for that issuer one of the services referred to in Annex I, Section A, points 6 and 7, where the investment firm also provides to retail clients any of the investment services referred to in paragraph 2 and relating to the financial instruments subject to the placing or underwriting services.

This paragraph shall not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1), of Regulation (EU) No 1286/2014.

5. Paragraphs 1 and 2 shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.

6. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:

(a) before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;

(b) the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and

(c) the research for which the combined charges or the joint payment is made concerns issuers whose market

capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.

For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.

Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

7. Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients. The existence, nature and amount of such third-party payment(s) shall be disclosed in accordance with Article 24b(1).

Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision

of the investment or ancillary service.

The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the first subparagraph.

8. Three years after the date of entry into force of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of third-party payments on retail investors, in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of Directive (EU) [OP Please introduce the number of the amending Directive] on it. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.

Justification

The EC has announced a ban on inducements limited to the provision of execution services in an "execution-only" basis. However, the proposal goes much further, as it prohibits the use of commissions for the provision of the services of reception and transmission of orders (RTO) and execution of orders to or on behalf of retail clients, regardless of the modalities (even where an appropriateness test has been carried out), provided that the transaction(s) concerned are not covered by advice.

It is likely that this provision will have a major impact on investment firms (both manufacturers and distributors), considering the current impossibility to automatically trace whether specific advice has been provided prior to a given transaction, as well as the difficulties to implement, within the same securities account (or even for the same financial instrument for which the client has decided alone to increase a previously advised investment), two methods of remuneration (commissions and fees) and therefore two different accounting methods in order to distinguish transactions that have been advised from those that have not. Furthermore, it might lead to the narrowing of the range of products offered to investors.

AMAFI and FBF strongly disagree with this proposal, which could result in their members being forced to waive commissions without delay and/or to limit the services offered to clients.

For more detailed explanation, please refer to AMAFI and FBF attached memos.

Besides, AMAFI and FBF would like to alert on the negative impacts of Article 24a (1) [transfer of inducements received to clients], 24a (4) [exemptions for placement fees] and the third subparagraph of Article 24a (7) [necessary payments or benefits and payments to third parties]. On those topics, please refer to the attached Annex.

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In return for the deletion of Article 24a (inducements), AMAFI and FBF propose the alternative solutions below in order to improve transparency, prevent potential conflicts of interest and ensure a high standard of service for investors.

Amendment 6

Proposal for a directive
New Article 1(7) (c) of omnibus directive modifying Article 9(3) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
(b) in the second subparagraph, the following (d) ***is*** added:	(b) in the second subparagraph, the following (d) ***and (e) are*** added:
'(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.'	'(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.'
	(e) an internal policy on fees, commissions and non-monetary benefits, aiming to ensure compliance with the obligations set out in the second subparagraph of Article 23(1).

Amendment 7

Proposal for a directive
New Article 1(12) of omnibus directive modifying Article 23(1) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
1. Member States shall require investment firms to take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, including those caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures.	1. Member States shall require investment firms to take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, including those caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures. ***Where investment firms accept and retain any fee or commission, or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, by any party except the client or a person on behalf of the client, Member States shall require those investment firms to have an internal policy to ensure that the abovementioned remuneration are of the same order of magnitude within each category of financial instruments involved for offering or recommendation, regardless of the nature of the investment firms which manufacture those financial instruments (should they have close links with the paid investment firms or not).***

Justification

To prevent potential conflicts of interest in the provision of investment services, AMAFI and FBF propose to add new provisions on an individual internal policy each distributor will have to elaborate to ensure that the inducements they receive are of the same order of magnitude, within each category of financial instruments they distribute (e.g., French equity funds), regardless of the nature of their manufacturers (should they have close links with the distributor or not). This individual internal policy may be provided to the relevant national authority upon request.

Amendment 8

Proposal for a directive
Article 1(13) of the omnibus directive adding new Article 24b to MiFID II.
After 24b (1), the following 1a is inserted:

Text proposed by the Commission	*AMAFI and FBF amendment*
	1a. The investment firm shall inform the clients of all the services provided to them in return for third-party payments paid or received in connection with the provision of investment services. This information shall be disclosed in good time prior to (i) the first provision of any investment service and ancillary service, and (ii) with the annual statement referred to in paragraph 4.

Justification

AMAFI and FBF members often observe that their clients are not conscious of all the services (including added-value services) that are available to them when distributors are remunerated via inducements.

Therefore, AMAFI and FBF suggest reinforcing clients' information on all services provided to them in return for the commissions received by the distributors. This information shall be disclosed in good time prior to (i) the first provision of any investment service and ancillary service, and (ii) with the annual costs and charges statement.

AMAFI and FBF amendments to MiFID II part 2 – Product governance requirements

Amendment 9 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (1) (e) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, a clear identification and quantification of all costs and charges related to the financial instrument and an assessment of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').	(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council* ***with the exception of hedging instruments, exchange-traded vanilla derivatives and their securitized derivative equivalents,*** a clear identification and quantification of all costs and charges related to the financial instrument and an assessment of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').

Amendment 10 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (1) third subparagraph is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
The pricing process referred to in point (e) shall include a ***comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.***	The pricing process referred to in point (e) shall include, ***where relevant, an internal comparison process on costs and performance with similar financial instruments at national level, including also qualitative criteria (e.g. capital protection, liquidity, ESG characteristics, applicable tax regime, services provided to***

the client if any).

Amendment 11 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (1) fourth subparagraph is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
When a financial instrument deviates from the relevant benchmark referred to in paragraph 9, the investment firm shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be approved by the investment firm.	If justification and proportionality of costs and charges, ***with due regard to quantitative and qualitative criteria,*** cannot be demonstrated, the financial instrument shall not be approved by the investment firm.

Amendment 12 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (2) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
2. An investment firm which manufactures financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities the following: ***(a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;*** ***(b) data on the characteristics of the financial instrument, in particular its performance and the level of risk.*** ***The competent authorities shall transmit***	***Deleted.***

data referred to in point (a) and (b) to ESMA without undue delay.

Amendment 13 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (4) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
4. An investment firm shall regularly review financial instruments it offers or recommends, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.	4. An investment firm shall regularly review financial instruments it offers or recommends, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.
An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall ensure the following:	An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, ***with the exception of hedging instruments, exchange-traded vanilla derivatives and their securitized derivative equivalents,*** shall ensure the following:
(a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;	(a) identify and quantify, ***if any,*** the costs of distribution and any further costs and charges not already taken into account by the manufacturer;
(b) assess whether the total costs and charges are justified and proportionate, having regard to the target market's objectives and needs (pricing process).	(b) assess whether the costs and charges ***referred to in point (a)*** are justified and proportionate, ***in relation to quantitative and qualitative criteria,*** having regard to the target market's objectives and needs (pricing process).
The pricing process, as referred to in points (a) and (b), shall include ***a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.***	The pricing process, as referred to in points (a) and (b), shall include, ***where relevant, an internal comparison process at national level with similar financial instruments on the impact of all costs and charges, having regard to quantitative and qualitative***

	criteria (e.g. services provided to the client, distribution network, etc.).
When a financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviates from the relevant benchmark referred to in paragraph 9, the investment firm which offers or recommends a financial instrument shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.	If justification and proportionality of ***all*** costs and charges, ***with due regard to quantitative and qualitative criteria,*** cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.

Amendment 14 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (5) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
5. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities details of the costs of distribution, including any costs related to the provision of advice or any connected third-party payments.	***Deleted.***
The competent authorities shall transmit such details of costs of distribution to ESMA without undue delay.	

Amendment 15 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (6) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
6. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, manufactured by a manufacturer that is not subject to the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall report to their home competent authorities the following:	***Deleted.***
(a) details of costs and charges of any financial instrument destined for retail investors, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;	
(b) data on the characteristics of the financial instruments, in particular its performance and the level of risk.	
The competent authorities shall transmit such data without undue delay to ESMA.	

Amendment 16 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (7) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:	7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant ***national*** competent authority, including the following:
(a) where relevant, the results of the ***comparison of the financial instrument to***	(a) where relevant, the results of the

the relevant benchmark;	***comparison process;***
(b) where applicable, the reasons justifying a deviation from the benchmark;	***(b) Deleted. (c) becomes (b).***
(c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.	(***b***) the justification and demonstration of the proportionality of costs and charges of the financial instrument, ***with due regard to quantitative and qualitative criteria.***

Amendment 17 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (9) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
9. After having consulted EIOPA and the competent authorities, ESMA shall, where appropriate, develop and make publicly available common benchmarks for financial instruments that present similar levels of performance, risk, strategy, objectives, or other characteristics, to help investment firms to perform the comparative assessment of the cost and performance of financial instruments, falling under the definition of packaged retail investment products, both at the manufacturing and distribution stages.	***Deleted.***
The benchmarks shall display a range of costs and performance, in order to facilitate identification of financial instruments whose costs and performance depart significantly from the average.	
The costs used for the development of benchmarks for investment firms manufacturing financial instruments shall, in addition to the total product cost, allow comparison to individual cost components. The costs used for the development of benchmarks for distributors shall, in addition to the total cost of the product, refer to the distribution cost.	
ESMA shall regularly update the	

benchmarks.

Amendment 18 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II.
Article 16-a (11) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to specify the following:	***Deleted.***
(a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;	
(b) the criteria to determine whether costs and charges are justified and proportionate.	

Amendment 19 – Product governance requirements/VFM and benchmarks

Proposal for a directive
Article 1(9) of omnibus directive adding new Article 16-a to MiFID II
Article 16-a (12) is modified as follow:

Text proposed by the Commission	*AMAFI and FBF amendment*
12. ESMA, after having consulted EIOPA and the competent authorities and taking into consideration the methodology referred to in paragraph 11, point (a), shall develop draft regulatory technical standards specifying the following:	***Deleted.***
(a) the content and type of data and details of costs and charges to be reported to the competent authorities in accordance with paragraph 2, 5 and 6, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;	
(b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be	

reported in accordance paragraph 2, 5 and 6.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months] after adoption of the delegated act referred to in paragraph 11.

Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

Justification

AMAFI and FBF support the introduction of new product governance measures designed to ensure the value for money (VFM) of financial instruments marketed in the European Union to retail clients. However, the EC proposal raise serious concerns and lead AMAFI and FBF to formulate the following remarks:

The scope of the new VFM provisions is too broad, since it applies to all financial instruments subject to PRIIPs, without distinction between them. Exemptions should be provided for hedging products since, by their very nature, their purpose is to meet very specific financial characteristics for which price considerations are much less pertinent than for investment products. Vanilla derivatives and their securitised derivative equivalents (e.g. warrants, turbos) traded on exchanges should not be included in the scope of the VFM either, given their large number (over 100,000 ISINs per year for the largest issuers) and the pricing method used, which depends mainly on whether they are "in the money" or "out of the money".

The EC approach is exclusively quantitative, based essentially on monitoring the costs and charges of financial instruments, without considering the qualitative aspects attached to these same instruments (e.g., guarantee/protection of the capital invested, liquidity, ESG characteristics, quality of the asset management company (due diligences, tracking records, services included, etc.), signature of the bank counterparty for structured products, etc.) and the services provided by distributors. The EC proposal will deprive most of the clients with very modest financial portfolios of these services.

ESMA's ability to design pan-European benchmarks that are sufficiently reliable, up-to-date and relevant is highly uncertain, given the granularity required to avoid comparing financial instruments that are not comparable. For some specific financial instruments, such benchmarks may not be available. The relevance of pan-European benchmarks is also questionable, given the specific national characteristics of certain products. For example, German property funds are very different from their French equivalents, which should prevent them from being grouped together in a common benchmark for comparison purposes. Similarly, certain national products come with tax advantages that make them unique and should logically prevent them from being compared with non-equivalent European products. Furthermore, as far as distribution costs are concerned, it would make no sense to group them together in pan-European benchmarks given the wide variations in distribution costs between Member States,

which are notably directly linked to differences in living standards and the existence/granularity of distributors' physical distribution networks (branches).

Finally, the mandatory nature of the benchmarks thus defined is seen by AMAFI and FBF as an intervention in pricing likely to hinder the free play of competition. The legitimacy of the European supervisory authorities (ESMA, EIOPA) to intervene on these issues is also questionable. Indeed, from an institutional point of view, given the 2010 European regulations establishing these authorities, it is difficult to determine in what way the tasks entrusted to them could include the definition of cost and performance criteria for financial products distributed within the Union. On the contrary, Recital 13 of Regulation 1095/2010 establishing ESMA clearly states that "The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth".

Amendment 20 – Exemptions from product governance requirements

Proposal for a directive
Article 1(10) of the omnibus directive modifying Article 16a of MiFID II.

Text proposed by the Commission	*AMAFI and FBF Amendment*
An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to ***bonds with no other embedded derivative than a make-whole clause*** or where the financial instruments are marketed or distributed exclusively to eligible counterparties.	An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to ***shares and bonds issued for the sole purpose of raising funding for their issuer*** or where the financial instruments are marketed or distributed exclusively to eligible counterparties.

Justification

The issuance of ordinary shares and bonds serves the purpose of raising funds for an issuer. For that reason, they should not be viewed as investment products that are designed and issued to meet clients' expectations. Therefore, they should not be subject to product governance rules.

In practice, such rules are ill-suited for them. Notably, the obligation to determine a target market has no added value in terms of investor protection, as these financial instruments are predominantly distributed passively through execution services, which do not involve matching the clients' characteristics with the target market (apart from knowledge and experience when providing execution services with the appropriateness test).

This poor added value is not commensurate to the significant burden stemming from the sheer number of financial instruments concerned (as an example, in a single trading day on Euronext, at least 150 000 different ISIN codes of ordinary shares and bonds are traded).

Other product governance rules are not relevant for such categories of financial instruments: assessment of costs (as there is no product cost attached to these financial instruments), performance scenarios, regular review or target market.

The application of the product governance rules thus raises practical difficulties, which disincentivise distributors from proposing these simple financial instruments on the secondary market.

Ordinary shares and bonds should be distributed without these inappropriate restrictions, under the safeguards provided by MiFID II distribution regimes.

AMAFI and FBF amendments to MiFID II part 3 – Best interest of the clients

Amendment 21

Proposal for a directive
Article 1(12) (b) of the omnibus directive adding new Article 24(1a) to MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
(b) the following paragraph 1a is inserted:	***Deleted.***
'1a. Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms are under the obligation of the following:	
(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments;	
(b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features;	
(c) to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.';	

Amendment 22

Proposal for a directive
Article 1(12) (j) (ii) of omnibus directive modifying Article 24(13) (d) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
(ii) point (d) is replaced by the following:	***Deleted.***
'(d) the criteria to assess compliance of firms providing investment advice to retail	

clients, notably those receiving inducement, with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.';

Amendment 23

Proposal for a directive
Article 1(2) of omnibus directive modifying Article 3(2) (b) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF amendment*
(2) in Article 3(2), points (b) and (c) are replaced by the following:	(2) in Article 3(2), points (b) and (c) are replaced by the following:
'(b) conduct of business obligations as established in Article 24(1), **(1a),** Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;	'(b) conduct of business obligations as established in Article 24(1), Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;

Justification

AMAFI and FBF have serious concerns regarding the EC proposal to introduce the concept of "best interest of the client" with its three criteria.

While, in France, the first criterion raises no major difficulties for financial instruments marketed under MiFID II, the same cannot be said for IDD, as distributors usually offer only one MOP (multiple option product), the diversification being provided by the MOP's underlying assets rather than by multiple envelopes.

The second criterion requires the client to be recommended "the most cost-efficient financial instrument (...) and offering similar features" among those identified as suitable. This provision generates legal uncertainty for several reasons: (i) firstly, because there is no definition of what the "most cost-efficient financial instruments" and those "offering similar features" might be; (ii) secondly, because this criterion essentially refers to the costs of the financial instruments without considering their expected performance; and (iii) thirdly, because it gives clients the possibility of taking action against their adviser if the performance of the financial instruments in which they have invested is below their expectations.

The third criterion, by favoring "products without additional features", denies the potential benefits for clients of these features and suggests that they would simply increase costs for clients without providing any benefit. On the contrary, certain financial instruments are designed to provide clients with specific benefits, in line with their suitability test, such as protection of the capital invested or ESG characteristics. Furthermore, showing systematic preference for "products without additional features" is to deny the usefulness of the VFM and

the role of the adviser, as well as the very definition of the investment advice service, which aims to determine the most suitable financial instruments for a client's particular situation, considering a range of data, and not focusing on the supposed simplicity of certain products.

AMAFI and FBF also consider that if such a requirement were to lead advisers to systematically recommend at least two different financial instruments for each component of their investment recommendation, the result would be more complex declarations of suitability, to the detriment of clarity for clients. The latter would then be faced with multiple proposals, and therefore choices, for each investment recommendation, which we do not believe is appropriate for retail clients, who often have limited knowledge of financial matters.

Finally, it has not been demonstrated that the current regulatory framework, which is already extremely comprehensive since it ranges from product governance requirements (which will be strengthened by the VFM requirements) to obligations governing the provision of investment advice itself, has led to poor results for clients and/or to unsuitable financial instruments being advised.

In conclusion, AMAFI and FBF consider that these new requirements are a source of great uncertainty, counterproductive and redundant in relation to existing regulations. The essential point is that appropriate steps have been taken at an early stage to ensure that the financial instruments offered present a satisfactory cost/benefit ratio for clients (in application of the VFM obligations).

AMAFI and FBF amendments to MiFID II part 4 – Simplified independent advice

Amendment 24

Proposal for a directive
Article 1(12) (e) (i) of omnibus directive modifying Article 24 (4) (a) (iv) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex as referred to in article 25(4)(a) and cost-efficient financial instruments only;	***Deleted.***

Amendment 25

Proposal for a directive
Article 1(12) (h) of omnibus directive adding new Article 24 (7a) to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
7a. When providing investment advice to retail clients on an independent basis, the investment firm may limit the assessment in relation to the type of financial instruments mentioned in paragraph 7, point (a), to well-diversified, cost-efficient and non-complex financial instruments as referred to in Article 25(4)(a). Before accepting such service, the retail client shall be duly informed about the possibility and conditions to get access to standard independent investment advice and the associated benefits and constraints.	***Deleted.***

Amendment 26

Proposal for a directive
Article 1(14) of omnibus directive modifying Article 25 (2) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
2. ***Subject to the second subparagraph, w***hen providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services or financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.	2. **W**hen providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services or financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.
When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the independent firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.	

Justification

AMAFI and FBF consider that Article 25 (2) subparagraph 2 provisions confer an undue advantage:

- *On the one hand, to independent investment advisers, and thereby to a specific remuneration model (fee-based) as opposed to another (commission-based), with no regard for the most elementary investor protection concerns;*
- *On the other hand, to certain categories of financial instruments on the sole basis of their non-complexity and supposed profitability. However, it should be remembered that simplicity does not necessarily mean absence of risk, and that more complex financial instruments may be perfectly suited for clients who wish to benefit, for example, from total or partial protection of the capital invested.*

AMAFI and FBF also wonder about the undefined notion of "well-diversified" financial instruments: does this mean offering (i) a wide range of possible underlying, (ii) products that themselves invest in different asset classes or (iii) geographical, sectoral, etc. diversification? Without further clarification, this extremely vague concept opens the door to a multitude of interpretations that lead to legal uncertainty.

Finally, we find a paradox in the fact that the European Commission, which claims to be seeking to raise the level of client protection, intends at the same time to reduce this level of protection on the sole basis of the "independent" nature of the investment advice provided to clients. The remuneration model chosen by an adviser (commissions or fees) should not have any impact on the way investment services are provided to clients, since the risks incurred by the latter in both cases are strictly identical. Consequently, in proposing this measure, the European Commission is either giving priority to the operational interests of independent advisers over those of their clients, or it is admitting that all the information collected is not essential to the provision of advice on non-complex financial instruments, in which case the measure should be extended to non-independent advisers.

It should be noted that in France this provision might be difficult to implement, as case law has set a general duty on advisers to provide sufficient information and advice to enable clients to take informed investment decisions. Therefore, removing the obligation to assess the client's knowledge and experience seems difficult to consider.

Consequently, we suggest either: (i) extending the measure to all advisers, regardless of their remuneration model, but limiting it to the absence of verification of the client's existing portfolio, or (ii) deleting this provision.

AMAFI and FBF amendments to MiFID II part 5 – Appropriateness and suitability

Amendment 27 – Inclusion of portfolio diversification in the suitability test
Proposal for a directive
Article 1(14) (a) of omnibus directive modifying Article 25(2) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF Amendment*
2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's financial situation, including the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.	2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's knowledge and experience in the investment field relevant to the specific type of product or service, that client's financial situation, including, ***where relevant,*** the composition of any existing portfolios, its ability to bear full or partial losses, investment needs and objectives including sustainability preferences, if any, and risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses and ***potential*** need for portfolio diversification. ***Where the investment firm deems the information provided is not sufficient to allow for assessing the client's need for portfolio diversification, it shall warn the client that the service provided is based on incomplete information and therefore does not consider its potential diversification needs.***

Justification

The need for portfolio diversification should not be assessed in all cases but only where it is proportionate to the scope of the service provided to clients. There should still be room for targeted advice focusing on part of the client's invested amount. Besides, diversification

considerations have no relevance in relation to advice provided on financial instruments such as derivatives acquired for hedging purposes.

It should also be considered that many clients do not want to share detailed information on their holdings with competitors. It is important that the firm is not prevented from giving advice to retail clients who are not willing to share information about external portfolios, provided that it is made clear to them that the advice in such a case is based on incomplete information.

In any case, such a requirement should not apply to professional clients who have the necessary knowledge to appreciate a diversified portfolio.

Amendment 28 – Extension of the appropriateness test to the capacity to bear losses and risk tolerance
Proposal for a directive
Article 1 (14) (a) of omnibus directive modifying Article 25(3) of MiFID II.

Text proposed by the Commission	*AMAFI and FBF Amendment*
3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph (2), ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, and for the retail client or potential retail client, ***the capacity to bear full or partial losses and risks tolerance*** so as to enable the investment firm to assess whether the investment service(s) or financial instruments(s) envisaged is appropriate for the client.	3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph (2), ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, and for the retail client or potential retail client, so as to enable the investment firm to assess whether the investment service(s) or financial instruments(s) envisaged is appropriate for the client.

Justification

The proposal to extend the appropriateness test to the capacity to bear full or partial losses and to risk tolerance raises several issues:

- *It erases the existing differences between the appropriateness test, relating to the provision of investment services other than investment advice and portfolio management, and the questionnaire required for the provision of the two aforementioned services, thereby introducing some confusion in clients' minds as to the services actually provided to them and leading to an increase in the number of potential disputes with their investment firm;*

- *It will necessarily lead to an increase in the number of alerts issued to clients, thus requiring their confirmation and considerably burdening an already complex client*

journey. Furthermore, the proliferation of those alerts may, contrary to the desired objective of improving investor protection, ultimately undermine their impact;

- *The addition of the two criteria will also have the effect of (i) lengthening and increasing the assessment process and, like the suitability assessment from which it takes two of the components, (ii) rendering it more intrusive for a large part of clients. It would be particularly detrimental if, in seeking to improve retail client protection, this provision were to have the opposite effect, leading many retail clients to forego the protection currently offered by the assessment of their knowledge and experience and instead opt for the provision of execution services on an execution-only basis;*

- *The criterion relating to the ability to bear total or partial losses is likely to be particularly difficult to implement in the context of the provision of execution services, given the automation that its verification will require as well as the large amount of data that it supposes to collect (information on the income, investments and financial assets of clients, many of whom are multiple-bank clients);*

- *Finally, the addition of these two criteria is not neutral with regard the IT developments required for their implementation, generating significant costs for investment firms. This will be aggravated by the need to re-evaluate all clients who do not benefit from investment advice in order to gather the information required for monitoring the two new criteria.*

For these reasons, AMAFI and FBF do not support such proposal which might reduce the capacity to provide retail clients with diversified financial instruments. Would it be considered as mandatory, AMAFI and FBF would limit the expansion of the appropriateness assessment by introducing the sole criterion of risk tolerance, which seems less complex to implement than the capacity to bear total or partial losses.

Amendment 29 – Confirmation procedure

Proposal for a directive
Article 1(14) of omnibus directive modifying Article 25(3) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
3. (…)	3. (…)
Where the investment firm assesses, on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. That warning shall be provided in a standardised format and shall be recorded.	Where the investment firm assesses, on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the ***retail*** client or potential ***retail*** client, the investment firm shall warn the ***retail*** client or potential ***retail*** client. That warning shall be provided in a standardised format and shall be recorded.
The investment firm shall ***not proceed with a transaction subject to*** a warning indicating that the product o**f** service is not appropriate, ***unless the client asks to proceed with it despite such warning. Both*** demand of the client and acceptance of the firm shall be recorded.	The investment firm shall ***ask retail clients whether they want to make an agreement whereby they are required to confirm their orders for which*** a warning indicating that the product or service is not appropriate ***has been sent. Such agreement, as well as the*** demand of the client and ***the*** acceptance of the firm shall be recorded.

Justification

The proposed confirmation procedure required under the appropriateness regime in case the product or service appears not to be compatible with the clients' profile raises several issues:

- *The time needed to send the request and receive the confirmation from clients is likely to run contrary to the best execution requirements notably those based on the speed of execution (see Article 66(3) (d) od MiFID II delegated regulation);*
- *It could delay the handling of limit orders, leading to the client missing potential market windows.*

Therefore, the confirmation procedure should not be mandatory but instead made available to clients through an opt in procedure. In any case, it should be limited to retail clients, professional clients being presumed to "possess the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs" (see Annex II, 1st paragraph of MiFID II).

Amendment 30

Proposal for a directive
Article 1(14) (d) of omnibus directive modifying Article 25 (8) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
8. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in paragraphs 1 to 6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes of paragraph 4, point (a)(vi), of this Article, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:	***Deleted.***
(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;	
(b) the nature of the products being offered or considered, including different types of financial instruments;	
(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties.	

Justification

The EC's proposal adds new elements to the scope of the delegated acts to be adopted in accordance with the provisions of Article 25(8): (i) the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided, and (ii) the nature of the services offered or provided to the client or potential client, having regard to (…) costs, risks, complexity, price (…) of the transactions.

AMAFI and FBF are strongly opposed to these additional provisions since:

- *Costs, risks, complexity and price of the transactions are already covered by other provisions of the omnibus directive, notably those related to product governance and value for money requirements;*
- *The records and agreements for the provision of services to clients and of periodic reports to clients on the services provided are drawn up by each investment firm, taking into account several key factors such as: (i) the nature of its client base, (ii) the financial instruments included in its product range, (iii) the ways in which investment services are provided to its clients (face-to-face and/or remotely by telephone and/or electronic means), and (iv) its own IT constraints. The content of these records and documents therefore varies considerably from one investment firm to another, depending notably on the parameters mentioned above.*

Yet standardising all this information, as proposed by the European Commission, negates the specific characteristics of each investment firm and the tailor-made nature of the services they provide. Such standardisation also runs the risk of erasing the differences between investment firms and therefore any customisation in the way they provide investment services.

It is also a maximalist approach that removes any proportionality between the due diligence to be carried out and the expected benefits for the clients (which are inexistent).

AMAFI and FBF also warn that such a measure will require existing clients to re-sign all the contractual documentation related to the investment services provided by their investment firm., generating significant additional costs for the latter, and therefore inevitably for clients.

For these reasons, we recommend reverting to the MiFID 2 provisions currently in force.

AMAFI and FBF amendments to MiFID II part 6 – Disclosures

Preliminary remark

Due to the deletion Article 24a related to inducements, the numbering of the following articles is thus impacted. In the amendments below, the reference to Article 24b becomes Article 24a.

AMAFI and FBF view favorably EC's proposal to alleviate disclosure requirements by grouping together several ex-post disclosure requirements.

However, some new requirements are extremely demanding and go far beyond the existing ones, resulting in higher information load to clients and significant impacts on firms' operating systems. This runs contrary to the stated ambition of RIS to simplify, clarify, and at the same time, limit the amount of information provided to retail investors (on this topic, see point (2) § 1.6 of the Kantar report that concluded that investors do not need more but clearer information). It should be highlighted that the operational implementation of costs and associated charges requirements is one of the most difficult and burdensome to achieve, as cost calculations require the processing and aggregation of numerous data available in different information systems. The FBF therefore calls for the greatest possible stability on these issues, which have already been subject to three major changes since the initial adoption of MiFID 2 and of the PRIIPs Regulation.

Amendment 31 – Services provided to professional clients.

Proposal for a directive
Modifications to Article 29a of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. The requirements laid down in ***point (c) of*** Article 24***(4)*** shall not apply to services provided to professional clients except for investment advice and portfolio management.	1. The requirements laid down in Article 24***a*** shall not apply to services provided to professional clients except for investment advice and portfolio management.
2. The requirements laid down in the ***third*** subparagraph of Article 25(2) and in Article 25(6) shall not apply to services provided to professional clients, unless those clients inform the investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in those provisions.	2. The requirements laid down in the ***fourth*** subparagraph of Article 25(2) and in Article 25(6) shall not apply to services provided to professional clients, unless those clients inform the investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in those provisions.
3. Member States shall ensure that investment firms keep a record of the client	3. Member States shall ensure that investment firms keep a record of the client

communications referred to in paragraph 2.	communications referred to in paragraph 2.

Amendment 32 – Services provided to professional clients.

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24b (1) subparagraphs 6 and 7 to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. (…)	1. (…)
Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.	***Deleted.***
Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.	

Justification

While the obligations to provide information on costs and associated charges for professional clients and eligible counterparties were alleviated by the Quick Fix directive, the omnibus directive reverses this two-tier system by providing that the aforementioned new information obligations – which are considerably strengthened – apply to all clients.

Yet, as provided for in recital 5 of the Quick Fix directive, "(...) professional clients and eligible counterparties do not need standardised and mandatory costs information as they already receive the necessary information when they negotiate with their service provider. The information provided to professional clients and eligible counterparties is tailored to their needs and often more detailed. Services provided to professional clients and eligible counterparties should therefore be exempted from the costs and charges disclosure requirements, except with regard to the services of investment advice and portfolio management(...)".

Therefore, we suggest limiting the application of the costs and charges provisions to retail clients by amending both Articles 29a and 24b (1) of MiFID II.

Amendment 33 – Costs and charges disclosures

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24b (1) subparagraph 1 to MiFID II which becomes Article 24a (1).

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment ***services and*** ancillary service***s***, ***and in good time prior to the conclusion of any transaction on financial instruments*** with information, in the required format, on all costs, associated charges and third-party payments related to those services, financial instruments or transactions.	1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment ***or*** ancillary service with information, in the required format, on all costs, associated charges and third-party payments related to those services, financial instruments or transactions.

Justification

The amendment proposed by the Commission has the effect of requiring transaction-by-transaction disclosure where a portfolio management service is provided. This will significantly increase the amount of information provided to clients, which goes against one of the objectives of the CMU. Moreover, providing such information to clients is inconsistent with the nature of the mandate given to their portfolio managers, who are required to make investment decisions on their behalf.

Amendment 34 – Costs and charges disclosures

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24b (1) subparagraph 3 to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. (…)	1. (…)
Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the client to understand the overall cost, of the financial instruments and the cumulative effect on return of the investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding ***periods of 1, 3 and 5 years***. Where the client so requests, investment firms shall provide an itemised breakdown.	Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the client to understand the overall cost, of the financial instruments and the cumulative effect on return of the investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding ***period of 1 year***. Where the client so requests, investment firms shall provide an itemised breakdown.

Justification

The proposed requirement to calculate and disclose costs for holding periods of 1, 3 and 5 years in the absence of a recommended holding period is also extremely burdensome. Clear and simple disclosure is essential to capture the attention of retail clients and the proposal goes against this principle.

The most effective approach would be to calculate and disclose ongoing costs on a 12-month basis, so that retail clients would have a clear and understandable view of total costs on an annual basis.

Amendment 35 – Costs and charges disclosures

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24b (1) subparagraph 4 to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. (…)	1. (…)
The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. ***The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph.*** The purpose of the third-party payments ***and their impact on the net return*** shall be explained in a standardised way and in a comprehensible language for an average retail client.	The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The purpose of the third-party payments shall be explained in a standardised way and in a comprehensible language for an average retail client.

Justification

The proposal sets out two different requirements for calculating and presenting the cumulative effect of costs on returns: the existing requirement for the total costs and one additional for third party payments. Given that third party payments shall be itemized separately in the costs and charges information provided to clients, AMAFI and FBF consider that it is not proportionate but excessive to include an additional cumulative effect of third-party payments on returns. The key issue, from a retail client perspective, is how the total costs affect the return, not how a specific cost component affects the return.

Amendment 36 – Costs and charges disclosures

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24b (4) to MiFID II which becomes Article 24a (4)

Text proposed by the Commission	*AMAFI and FBF Amendment*
4. Without prejudice to other requirements associated to portfolio management services, when providing any investment service to a retail client together with a	4. Without prejudice to other requirements associated to portfolio management services, when providing any investment service to a retail client together with a

service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:	service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:
(a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:	(a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:
i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;	i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;
ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;	ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;
iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;	iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;
(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;	***Deleted.***
(c) the total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, borne by the retail client for the total portfolio;	***Deleted***
(d) the annual market value, or estimated value, when the market value is not available, of each financial instrument included in the retail client's portfolio;	***Deleted***
(e) the net annual performance of the portfolio of the retail client ***and the annual performance of each of the financial instruments included in this portfolio.***	***(b)*** the net annual performance of the portfolio of the retail client.
Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client**,** the investment firm shall provide an annual statement including applicable information	Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client**,** the investment firm shall provide an annual statement including applicable information on point**s** (a) ***(i) and (iii).***

on point (a).

Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a), (b), (c) and (d).	***Deleted.***
Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to under point (a) ***to (c)*** above per financial instrument owned during the relevant period ***as well as for each tax borne*** by the retail client.	Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to ***under point (a)*** above per financial instrument owned during the relevant period by the retail client.
The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations as described under paragraph 2 of this Article.	The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations as described under paragraph 2 of this Article.

Justification

Some of the provisions of the new Article 24b (4) of MiFID II which becomes Article 24a (4) are of concern to AMAFI and FBF leading us to make the following comments.

- *All taxes charged to the client are directly included in the cost of the products and services, meaning that there is no need to disclose them separately which would lead to take them twice into account; therefore (c)should be deleted.*
- *We believe that the information required by (b) and (d) (dividends & interest and market value) should not be disclosed in the annual information statement on costs and charges. These items which have nothing to do with costs and charges do not pertain to this statement and would make it difficult to read and hardly intelligible for a retail client. Moreover, the information on the market value of each instrument (point (d)) are already required under the existing rules to send clients annual holding statements and therefore should not be required under information on costs and charges;*
- *In addition, the inclusion of detailed instrument by instrument information on performance under (e) would require considerable IT developments on the part of the investment firms concerned, generating significant costs, which would necessarily have an impact on the cost of the services provided to clients.*
- *Besides, investment firms providing exclusively the service of safekeeping and administration of financial instruments should not be required to provide information on the costs of financial services they have not provided (point (a)). In addition to the*

feasibility issues this would raise, it would put investment firms at a competitive disadvantage to firms not subject to MiFID II who provide such an ancillary service without having to be authorised.

- *It is inappropriate to require service providers that do not provide a service of safekeeping and administration of financial instruments to disclose ex post information on the performance or the costs and associated charges of the financial instruments in which clients have invested. These investment firms do not hold reliable information on the positions held by their clients and are therefore unable to provide the required information. They should therefore only be subject to the information requirements in points a) (i) and (iii).*

AMAFI and FBF amendments to MiFID II part 7 – Standardised format

Amendment 37

Proposal for a directive
Article 1(12) (f) of omnibus directive modifying Article 24 (5) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
5. The information referred to in paragraph 4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.	***Deleted.***

Justification

AMAFI and FBF are strongly opposed to any provision intended to enhance the standardisation of information provided to clients (except for costs and charges).

Regarding Article 24(5), we advocate reverting to the provisions of MiFID 2 currently in force.

Amendment 38

Proposal for a directive
Article 1(12) (g) of omnibus directive adding new Article 24 (5b) to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
5b. ESMA shall, by [2 years after the entry into force of the amending Directive], where necessary on the basis of prior consumer and industry testing, and after consulting EIOPA, develop, and update periodically, guidelines to assist investment firms that provide any	***Deleted.***

information to retail clients in an electronic format to design such disclosures in a suitable way for the average member of the group to whom they are directed.

The guidelines referred to in the first subparagraph shall specify the following:

(a) the presentation and format of the disclosures in electronic format, considering the various designs and channels that investment firms may use to inform their clients or potential clients;

(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;

(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.

Amendment 39

Proposal for a directive
Article 1(12) (g) of omnibus directive adding new Article 24 (5c) to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific risks of potential losses carried by particularly risky financial instruments.	5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific risks of potential losses carried by particularly risky financial instruments.
ESMA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky financial instruments taking due account of the specificities of the different types of instruments.	
ESMA shall develop draft regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of	

the different types of financial instruments and types of communications.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance with Article10 of Regulation (EU) No 1095/2010.

ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk warnings in Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms.

Amendment 40

Proposal for a directive
Article 1(14) (a) of omnibus directive modifying Article 25 (1) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.	1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.
The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or	The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or

potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:	potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:
(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;	(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;
(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. ***Such explanation and warning shall be provided in a standardised format.***	(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order.
The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness assessment. Such report shall be presented in a standardised format.	
ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.	
ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.	

Amendment 41

Proposal for a directive
Article 1(14) (a) of omnibus directive modifying Article 25 (3) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, and for the retail client or potential retail client, ***the capacity to bear full or partial losses and*** risks tolerance so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged is appropriate for the client.	3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the client or potential client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, and for the retail client or potential retail client, risks tolerance so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged is appropriate for the client.
Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.	Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.
Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. ***That warning shall be provided in a standardised format and shall be recorded.***	Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the ***retail*** client or potential ***retail*** client, the investment firm shall warn the ***retail*** client or potential ***retail*** client.
The investment firm shall not proceed with a transaction subject to a warning indicating that the product of service is not appropriate, unless the client asks to proceed with it despite such warning. Both demand of the client and acceptance of the firm shall be recorded.	The investment firm shall ***ask retail clients whether they want to make an agreement by which they are required to confirm their orders whereby*** a warning indicating that the product or service is not appropriate ***has been sent. Such agreement, as well as the*** demand of the client and ***the*** acceptance of the firm shall be recorded.
ESMA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in subparagraph 3.	
ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Articles 10 of	

Regulation. (EU) No 1095/2010.

Amendment 42

Proposal for a directive
Article 1(14) (b) of omnibus directive modifying Article 25 (4) of MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
(b) in paragraph 4, the following subparagraphs are added:	***Deleted.***
'ESMA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).	
ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].	
Power is conferred to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.';	

Justification

As previously stated, AMAFI and FBF are strongly opposed to any provision related to standardisation of the format and content of the explanations and warnings addressed to clients in relation to the provision of investment services (except for costs and charges).

These explanations and warnings are drawn up by each investment firm, taking into account several key factors such as: (i) the nature of its client base, (ii) the financial instruments included in its product range, (iii) the ways in which investment services are provided to its clients (face-to-face and/or remotely by telephone and/or electronic means), and (iv) its own IT constraints. The content and the format of the warnings may therefore vary from one investment firm to another.

Yet standardising this information, as proposed by the European Commission, negates the specific characteristics of each investment firm and the tailor-made nature of the services they provide. Such standardisation also runs the risk of erasing the differences between investment firms and therefore any customisation in the way they provide investment services.

It is also a maximalist approach that removes any proportionality between the due diligence to be carried out and the expected benefits for the clients (which are inexistent).

For these reasons, we recommend the deletion of all provisions related to the standardisation of warnings provided to the clients.

AMAFI and FBF amendments To MiFID II part 8 – Marketing communications and practices

Amendment 43

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24c to MiFID II.
Due to the deletion of Article 24a (inducements), Article 24c becomes 24b.

Text proposed by the Commission	*AMAFI and FBF Amendment*
4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.	4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.
Where an investment firm offers or recommends financial instruments which it does not manufacture, ***organises*** its own marketing communication, it shall be fully responsible for its ***appropriate content, update*** and use, in line with the identified target market and in particular in line with the identified client categorisation.	Where an investment firm offers or recommends financial instruments which it does not manufacture, ***elaborates*** its own marketing communication ***or amends the marketing communication prepared by the manufacturer,*** it shall be fully responsible for its ***drafting or amendments*** and use, in line with the identified target market and in particular in line with the identified client categorisation.
5. Member States shall ensure, investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.	***Deleted.***

Justification

AMAFI and FBF welcome the clarifications of the respective responsibilities of manufacturers and distributors with regard to marketing materials, as well as the introduction of definitions for marketing communications and marketing practices.

However, the terms "organises its own marketing communication" are unclear and should be amended. In particular, it would be inappropriate for the distributor to bear full responsibility for the content of a marketing communication that it has not drafted or to which it has not contributed. The distributor's liability should encompass and be limited to the changes it makes to the marketing communication designed by the manufacturer (and, of course, to the marketing communication it has drafted itself), as well as to the use it makes of any marketing communication. The provision must be amended accordingly.

In addition, AMAFI and FBF consider that the requirement for investment firms to "make annual reports to the firm's management body on the use of marketing communications and practices" raise several issues. Monitoring the aforementioned communications and practices falls within the scope of the compliance function, which already has the responsibility and duty to report to the management body on its findings and conclusions at least once a year, including any deficiencies identified. Making this a specific requirement for marketing communications and practices seems therefore excessive and unnecessary. Consequently, the FBF proposes that the new Article 24c 5 be deleted.

AMAFI and FBF amendments to MiFID II part 9 – Professional clients on option

Amendment 44

Proposal for a directive
Modification to Annex II Section II. 2 of MiFID II

Current MiFID II	*AMAFI and FBF Amendment*
Section II (…) **II.2. Procedure**	**Section II (…)** **II.2. Procedure**
Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed: - they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product, - the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose, - they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.	Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed: - they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product, - the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose, - they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.
Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.	Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1. ***Investment firms may, under their own responsibility and when they consider it appropriate, propose clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, to be treated as professionals after having presented them a balanced description of the advantages and disadvantages of this change in light with their personal situation. If, following this information, the client wishes to be treated as a professional, the procedure set out in the current section shall be followed.***

Justification

The amendments made to Annex II, paragraph II.1 of MiFID II are very welcome, as they take greater account of clients' characteristics and provide a differentiated approach to natural and legal persons, which has been missing until now.

However, clients who have been classified as "non-professional" by default, sometimes for many years, are not necessarily aware of the advantages and disadvantages of this classification compared with that of "professional" client.

AMAFI and FBF therefore recommend clarifying that intermediaries may, under their own responsibility and when they consider it appropriate, propose such a change of category to clients, presenting them with a balanced description of the advantages and disadvantages of each category in the light of their personal situation. If, following this information, the client wishes to request a change of category, this should be done in accordance with the procedures already set out in the directive.

AMAFI and FBF amendments to MiFID II part 10 – Professional requirements

Amendment 45

Proposal for a directive
Article 1(13) of omnibus directive adding new Article 24d to MiFID II
Due to the deletion of Article 24a (inducements), Article 24d becomes 24c.

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24, 24a, 24b, ***24c*** and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish the criteria to be used for assessing effectively such knowledge and competence.	1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles ***24, 24a, 24b*** and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish the criteria to be used for assessing effectively such knowledge and competence.
2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V ***and undertake at least 15 hours of professional training and development per year.*** Compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate.	2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V. Compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate.

The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.	The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.

Justification

New Article 24c (ex Article 24d) introduces a two-stage training regime for the staff of investment firms, similar to that already provided for by IDD concerning the staff of firms distributing insurance products: (i) an initial assessment of the knowledge and competence of staff providing investment advice and/or information to clients and, for natural persons solely providing investment advice, (ii) ongoing updating of that knowledge and competence through regular training of at least 15 hours per year.

Yet, for distributors who combine both activities (distribution of financial instruments and insurance products), the 15 hours annual training requirement must be considered cumulatively and is therefore doubled. Besides, such a minimum quota of 15 hours is not appropriate because it does not allow training to be adapted to each employee situation (an employee starting out or returning after a long absence has greater need for traning than an experienced employee who has occupied the same position for several years).

AMAFI and FBF therefore propose (i) to remove the requirement for regular training of at least 15 hours per year and (ii) to remove this requirement from IDD for the same reasons. However, if the quota of 15 hours per year were to be maintained in MiFID II and IDD, AMAFI and FBF believe that it would be appropriate to specify that for staff distributing both financial instruments and IBIPs, the total number of hours of training will not exceed a maximum of 15 hours.

AMAFI and FBF amendments to MiFID II part 11 – Reporting of cross-border activities

Amendment 46

Proposal for a directive
Article 1(16) of omnibus directive adding new Article 35a to MiFID II

Text proposed by the Commission	*AMAFI and FBF Amendment*
Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of its home Member State when they provide investment services to more than 50 clients on a cross-border basis:	Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of its home Member State when they provide investment services to more than 50 ***retail*** clients on a cross-border basis**, *limited to the services provided to retail clients*:**
(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities following a notification pursuant to Article 34(2);	(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities ***to retail clients*** following a notification pursuant to Article 34(2);
(b) the type, scope and scale of services provided and activities carried out in each host Member State through the freedom to provide investment services and activities and ancillary services;	(b) the type, scope and scale of services provided ***to retail clients*** and activities carried out ***with such clients*** in each host Member State through the freedom to provide investment services and activities and ancillary services;
(c) for each host Member State, the total number and the categories of clients corresponding to the services and activities referred to in point (b), and provided during the relevant period ending on the 31 December and a breakdown between professional and non-professional clients;	***Deleted.***
(d) the number of complaints referred to under Article 75 received from clients and interested parties in each host Member State;	***(c)*** the number of complaints referred to under Article 75 received from ***retail*** clients and interested parties in each host Member State;
(e) the type of marketing communications used in host Member States.	***(d)*** the type of marketing communications used in host Member States.

Justification

The RIS intends to improve retail client's protection, which may be enhanced by such reporting requirements.

However professional clients have the necessary competence and negotiation power to deal with the dissatisfaction they may have with an investment firm without imposing a burdensome reporting requirement on firms acting through the freedom to provide services. Therefore, asking for detailed information on professional clients is overly burdensome. All the more so as the questions asked clearly oriented towards retail clients (such as question on clients' complaints).

AMAFI and FBF amendments to MiFID II part 12 – Transposition

Amendment 47

Proposal for a directive
Article 6 of omnibus directive

Text proposed by the Commission	*AMAFI and FBF Amendment*
1. Member States shall adopt and publish, by 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall adopt and publish, by 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
2. They shall apply those provisions from [OP please insert the date = ***18 months*** after the date of entry into force of this Directive].	2. They shall apply those provisions from [OP please insert the date = ***5 years*** after the date of entry into force of this Directive].
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Justification

Article 6 of the omnibus directive states that Member States have 12 months from the date of its entry into force to adopt and publish the laws, regulations and administrative provisions necessary to comply with the directive. The text also stipulates that the national measures thus adopted will be applicable within 18 months of the aforementioned date of entry into force.

Thus, barely 18 months after the publication of the omnibus directive in the Official Journal of the European Union, its new provisions are due to come into force, even though many of them, including some of the most significant (e.g., VFM), require level 2 measures to be implemented. Yet it is very likely that these level 2 measures will not be finalised on time so that Member States can incorporate them into their own regulations, requiring banks, in order to comply with this incomplete regulatory framework, to anticipate what might be decided at European or even national level, with the risk of having to redo the entire process once the full corpus of regulations is known.

Given the changes introduced by the omnibus directive, a significant part of the internal validation, distribution and advisory processes of manufacturers and distributors of financial instruments and IBIPs will have to be reviewed, generating significant costs for the relevant stakeholders, notably as regards IT developments.

AMAFI and FBF therefore consider that the date of application of the "omnibus" directive should be postponed allowing time for (i) the European authorities to publish the level 2 measures provided for in the text, (ii) the Member States to incorporate these measures into their respective national laws and regulations and, finally, (iii) the relevant stakeholders to comply with them.

In our opinion, a period of five years from the date of entry into force of the omnibus directive would be appropriate.

AMAFI and FBF amendments to PRIIPs

Some of the PRIIPs' amendments concern the provision of additional information to clients. Although they may be interesting from a consumer point of view, this would need to be ascertained by a thorough cost-benefit analysis and verified through consumer testing. These potential benefits must also be considered against the costs that such amendments would generate for manufacturers and distributors of financial products. The question needs to be asked about the barriers to entry that such measures create and, more generally, about their general usefulness for European markets in terms of the vitality of their players and the diversity of the offering available to investors. Is it not the role of competition rather than regulation to lead certain players to seize digital tools in order to stand out from their competitors? Is it necessary, in the interests of investors, to impose on everyone a level of service that is not proven to be vitally necessary for the client?

Amendment 48 – Scope of the PRIIPS Regulation

Modification to Article 2 of PRIIPS

Current PRIIPs	*AMAFI and FBF Amendment*
This Regulation shall not apply to the following products:	This Regulation shall not apply to the following products:
(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC;	(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC;
(…)	(…)
(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.	(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;
	(h) any bond, irrespective of its structure, issued for the sole purpose of funding its issuer.

Justification

The scope of PRIIPs is currently defined so that it can be considered as encompassing all types of bonds.

The newly proposed exemption for bonds with make-whole clause, while being a very positive step forward, is far from encompassing all ordinary bonds (i.e. other than structured bonds) for which applying PRIIPs is not relevant and constitute an obstacle to their distribution, which runs contrary to the CMU objectives.

As a result, in order not to fall within the scope of PRIIPs, issuers of ordinary bonds choose to exclude retail investors from the distribution of these financial instruments via a selling or/and transfer restriction clause in the prospectus, while in many cases there is no particular feature related to the financial instrument justifying the exclusion.

Distributors wishing to sell these products to retail clients hence face extra risks and administrative burdens, as these clients may fall outside of the positive target market or in the negative target market. In addition, as these financial instruments may be qualified as PRIIPs even if they are ordinary, the absence of a KID is a further obstacle to the distribution to retail clients.

As a result, these bonds are generally not available to retail investors thereby restricting retail access to the bond market.

For these reasons, all ordinary bonds (including those issued by financial issuers for funding purposes) should be excluded from the scope of the PRIIPs Regulation.

Amendment 49 – Multi Options Products

Proposal for a regulation
Article 1 (4) of omnibus regulation modifying Article 6 (3) of PRIIPs

Text proposed by the Commission	AMAFI and FBF Amendment
3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that: ***a) PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different investment options, including on costs;*** ***b) R***etail investors have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options ***c) PRIIPs manufacturers provide investors, upon their request and in good time before retail investors are bound by any contract or offer to invest in a given investment option,***	3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that ***r***etail investors have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options.

the complete costs of the PRIIP relating to this investment option

Justification

The requirement for the MOP manufacturer to provide a tool to search and compare the KIDs of the underlying investment options raises several issues:

- Feasibility issues, due to the extremely wide universe of underlying options, potentially with many different manufacturers, with whom processes will have to be developed to access constantly updated information;
- Liability issues associated with such situations: who, from the wrapper's or the underlying option's manufacturers will be liable in case the information provided is inaccurate or erroneous?

Therefore, we propose to delete paragraph a).

We also propose to delete paragraph c), which requires the manufacturer of the wrapper to provide full information on costs before the subscription of an investment option, for the following reasons:

- the Level 2 already requires manufacturers to provide clients with a range of costs for the different options available in the contract;
- considering the very large number of options usually proposed, obtaining up to date and reliable information on costs from potentially many PRIIPs manufacturers appears very challenging and again raises issues in terms of liabilities.

Amendment 50 – New section "Product at a glance"

Proposal for a regulation
Article 1(5) (a) of omnibus regulation adding new (aa) to Article 8 (3) of PRIIPs regulation

Text proposed by the Commission	*AMAFI and FBF Amendment*
(aa) under a section titled 'Product at a glance' a dashboard with summarised information about all of the following: (i) the type of the PRIIP, as referred to in point (c)(i); (ii) the summary risk indicator referred to in point (d)(i); (iii) the total costs of the PRIIP; (iv) the recommended holding period referred to in point (g)(ii); (v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv);	***Deleted.***

Justification

AMAFI and FBF are concerned about the feasibility of summarising all important information on the product in a single section (which would be named 'Product at a glance'). Experience shows that concentrating important information on a specific product in a three-page document has already been a major challenge of the PRIIPS Regulation. Gathering all important information in such a tight space without misleading clients due to the simplification needed seems an unachievable goal. Therefore, this requirement should be deleted.

Moreover, such a major change to PRIIPs should not be put forward without any proper cost-benefit analysis and consumer testing. On the contrary, the European Commission's impact assessment does not show that the current format is considered inadequate by clients and does not include an assessment of the change proposed.

Amendment 51 – ESG disclosures

Proposal for a regulation – New sustainability disclosures in the KID
Article 1(5) (d) of omnibus regulation adding new (ga) to Article 8 (3) to PRIIPs regulation

Text proposed by the Commission	*AMAFI and FBF Amendment*
(ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council and Commission Delegated Regulation 2022/1288, under a section titled 'How **environmentally** sustainable is this product?', the following information:	(ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council and Commission Delegated Regulation 2022/1288, ***or which are marketed with sustainability characteristics,*** under a section titled 'How sustainable is this product?', the following information:
(i) the minimum proportion of the ***investment of the*** PRIIP that is ***associated with economic activities that qualify as*** environmentally sustainable ***in accordance with Articles 5 and 6*** of Regulation (EU) 2020/852 of the European Parliament and of the Council;	(i) The minimum proportion of the ***PRIIP that is invested in*** environmentally sustainable ***investments as defined in Article 2 (1)*** of Regulation (EU) 2020/85230 of the European Parliament and of the Council;
(ii) the expected greenhouse gas emissions intensity associated with the PRIIP pursuant to Delegated Regulation 2022/1288;	***(ii) The minimum proportion of the PRIIP that is invested in sustainable investments as defined in Article 2 (17) of Regulation (EU) 2019/208831;***
	(iii) Which principal adverse impacts (PAI) on sustainability factors are considered by the PRIIP, including quantitative or

qualitative criteria demonstrating that consideration;

(iv) Whether, where relevant, the PRIIP has a focus on either environmental, social or governance criteria or a combination of them.

(gb) Multi-Option Products (MOPs) which offer a range of options for investments, should not contain the section "How sustainable is this product?"

Justification

It is not acceptable that the ESG criteria to be mentioned in the KID are not identical to the ones to be assessed under the MiFID suitability requirements. This inconsistency between regulatory requirements may cause retail investors to misunderstand the information they are provided with and may create difficulty and complexity in the distribution process. Therefore, we suggest using the terms of the ESMA's guidelines on MiFID II product governance to define the content of the ESG section of the KID. This will guarantee a smooth and consistent distribution process.

The scope of PRIIPs is wider than the one of SFDR: AMAFI and FBF consider that all PRIIPs with ESG characteristics, either falling under SFDR or not, should be subject to the disclosure requirements, not only those that are in scope of SFDR.

Moreover, it should be anticipated that the 3-page limit for the KID's format will have to be softened as a consequence of this new requirement.

For MOPs, because the sustainable characteristics may vary completely depending on the rebalancing of the portfolio on the various investment options, the sustainability section in the KID should not be required.

Amendment 52 – KID review

Proposal for a regulation
Article 1 (6) of omnibus regulation modifying Article 10 (2) of PRIIPs

Text proposed by the Commission	*AMAFI and FBF Amendment*
2. In order to ensure consistent application of this Article, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards specifying: (a) the conditions for reviewing the information contained in the key information document;	2. In order to ensure consistent application of this Article, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards specifying: (a) the conditions for reviewing the information contained in the key information document;

(b) the conditions under which the key information document must be revised**,** ***distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available***	(b) the conditions under which the key information document must be revised,
[...]	[...]
(e) ***The ESAs shall take into account situations where a PRIIP is no longer made available to retail investors.*** The ESAs shall submit those draft regulatory technical standards to the Commission by [one year after date of entry into force of this amending Regulation].	(e) The ESAs shall submit those draft regulatory technical standards to the Commission by [one year after date of entry into force of this amending Regulation].

Justification

The Commission has already clarified in a Q&A that the review requirement should not apply to KIDs that are no longer marketed, as well as the meaning of the terms "no longer marketed". Therefore, we see no reason to change this *interpretation, which the industry considers satisfactory. It would be a waste of time whereas many other issues need to be tackled. Moreover, and more importantly, if this interpretation was to be changed, its impact on the scope of the PRIIPS Regulation could be significant, warranting that this issue should be addressed at Level 1rather than at Level 2 by the ESAs.*

Amendment 53 – Digitalisation of KIDs, layering, and personalised information
Proposal for a regulation
Article 1(7) of omnibus regulation replacing Article 14 of PRIIPs
Article 14 (2), (3) and (4) of PRIIPs are modified as follows:

Text proposed by the Commission	*AMAFI and FBF Amendment*
(2)	(2)
The electronic format of the key information document may be provided by means of an interactive tool that enables the retail investor to ***generate personalised key information based on the information in the key information document or the information underlying it.***	The electronic format of the key information document may be provided by means of an interactive tool that enables the retail investor to ***access intelligent customisable searching functionalities on the PRIIPs KID.***
That tool shall respect the following conditions: (a) thee interactive tool, or its use, shall not alter the understanding of the key information document; (b) all key information shall be presented; (c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following message "It is	That tool shall respect the following conditions: (a) thee interactive tool, or its use, shall not alter the understanding of the key information document; (b) all key information shall be presented; (c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following

recommended to download and store the key information document"; ***(d) the interactive tool shall allow investors to simulate costs over the recommended holding period.*** Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.	message "It is recommended to download and store the key information document". ***Such tool should be considered as a service quality enhancement for the purpose of Article 24(9).*** Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.
(***3) The ESAs shall develop draft regulatory technical standards specifying the modalities for personalising the information as referred to in the first subparagraph of paragraph 2, and the conditions for adapting the formatting of the information, as referred to in the second subparagraph of paragraph 2.*** ***In addition to the modalities referred to in the first subparagraph, the regulatory technical standards shall include the conditions for personalising the key investor information in the following manners:*** - ***the conditions for personalising the information to allow investors to simulate costs over a holding period that is different from the recommended holding period;*** - ***the conditions for personalising the information to allow investors to compare different PRIIPs;*** - ***the conditions for personalising the information to make it accessible to persons with disabilities.***	***Deleted.***
(4) The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3)(a') shall appear in the first layer.	***Deleted.***

Justification

A thorough cost-benefit analysis of the possibility for clients to access information in a more personalised manner needs to carried out and verified through consumer testing to ensure that the expected benefits are commensurate with to the additional costs involved.

Anyhow there are a number of issues that should be solved before such amendments could be successful:

- *There is currently no technological solution that allows instant calculation of, for example, performance or costs for structured products. For these products, determining expected*

performances requires probabilistic calculations based on a very large number of scenarios;

- *If some solutions were developed, they would inevitably be very costly, which would be a barrier for smaller distributors;*
- *If clients were allowed to simulate different holding periods, the resulting information could be misleading to them: for example, in the case of autocall products, exiting before the call date would expose customers to unknown costs which would not necessarily be in their interests.*
- *Giving clients access to such a simulation tool would raise important liability issues between distributors and manufacturers that should be explored further: who would be responsible for the personalised information?*
- *The layering in paragraph (4) seems to consist of reordering the different sections of the KID, which does not seem to make much sense for a 3-page document that is sufficiently short to be read and requires a technology could be very costly to develop, without any expected clear benefit to the end clients, as there has been no cost-benefit analysis of this issue.*

Therefore, FBF and AMAFI propose to delete paragraph (3) and (4) of Article 14. It is also suggested to amend paragraph (2) by limiting the functionalities available to clients under new interactive tools to access intelligent customisable searching functionalities on the PRIIPs KID. It is also proposed to clarify that the provision of such tools should be viewed as enhancing the quality of service provided to clients.

Amendment 54 – Entry into force

Proposal for a regulation
Article 2 of omnibus regulation is modified as follows:

Text proposed by the Commission	*AMAFI and FBF Amendment*
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = 18 months after the date of entry into force of this amending Regulation]	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = 18 months after the date of entry into force **of the delegated acts required under this Regulation.**

Justification

The proposed application date is 18 months after the date of entry into force of the regulation. We consider that the trigger date for the 18 months implementation delay should be the adoption of Level 2 given the importance of the details to be defined at this level and the highly complex and structural changes that they would trigger.

ANNEX

The other difficulties AMAFI and FBF would see if Article 24a was to be maintained are the followings:

a) The exemption proposed for placement fees

AMAFI and FBF welcome the exemption envisaged for placement fees, as these are essential to ensure the placement of securities with investors, hence preserving the access of primary markets to issuers.

That said, there remains a difficulty with the placement fees of PRIIPs, as they would not be covered by this exemption. This difficulty is due to the extended scope of the PRIIPs regulation, which still encompasses ordinary bonds (see point d. of the section on PRIIPS below). As a consequence, the ban would still apply to the placement of ordinary bonds, which will hamper the raising of funds through such securities. This runs contrary to one of the CMU's objectives to increase retail clients' participation in financial markets and more generally to increase the role of capital markets in financing the economy. The exemption for placement fees should therefore be extended to all ordinary shares and bonds, which can be done through the amendment related to the scope of PRIIPs.

Otherwise, it could be achieved by clarifying, under Article 24a (4) subparagraph 2, that "This paragraph does not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1) of Regulation (EU) No 1286/2014 and do not aim at providing funding to its issuer.

b) Transfer of inducements to clients

AMAFI and FBF strongly oppose the deletion of the possibility afforded under MiFIDII to receive remunerations and transfer them in full to clients in relation to services for which a ban on inducements would apply (portfolio management, independent advice and potentially non-advised services).

Since the transfer of the remuneration implies that the investment firm does not benefit from the inducement, the conflict of interest that the rules on inducements intend to mitigate is nonexistent.

Therefore, the rationale for this draft amendment is no longer relevant and the current provision to "not accept and retain" inducements should be kept. If not, clients provided with the service of portfolio management or independent advice would no longer have access to any products embedding inducements which may significantly reduce the range of financial instruments available to them.

Another potential consequence is for clients provided with services for which they pay directly the firm investing in financial instruments embedding inducements: if the investment firm is prohibited from passing on to clients the inducements received, these clients will bear double costs, the service costs paid directly and the inducements embedded in the products costs.

AMAFI and FBF also draw the European Commission's attention to the fact that the proposed wording of Article 24a. 1[1] results in prohibiting not only payments received by the portfolio manager from third parties, but also payments made to third parties. However, ESMA expressly confirmed[2] that the inducement prohibition only covers inducements received by investment firms and that payments made to third parties are allowed under the existing regime, provided that the client is informed and receives a higher quality or an additional service. AMAFI and FBF note that such a prohibition has not been subject to any impact assessment or industry discussion and strongly oppose this amendment, especially given the impact it may have on portfolio managers who may find themselves unable to use third parties to market their portfolio management services.

c) *Necessary payments or benefits and payments to third parties*

Necessary payments or benefits should be extended to all cases, whatever the service provided, since, by nature, they do not give rise to conflicts of interest. Therefore, the 3rd paragraph of article 24a. 7 should not fall within the scope of such 7 which is dedicated to services where investment firms are "not prohibited from getting or paying fees or benefits, from or to a third party". It should apply equally to all services, so as to allow the mere provision of such services.

If not, as an example, it would no longer be legitimate for an investment firm providing execution services to its clients to pay membership fees to execution venues, settlement systems or a central repository. Such a ban of mandatory payments is unworkable, and those payments should be possible in all cases as it is currently the case. We believe that this change to the previous wording is a mistake that should be corrected, as adequate references have already been kept in the RIS proposal for IDD.

Likewise, investment firms providing any investment or ancillary services, including the ones subject to a current or future ban on inducements, should still benefit from the possibility of receiving payments from their clients or from any person acting on behalf of such clients.

Whereas such possibility arises from future Article 24 a.1 for portfolio management, it is not provided for under Article 24 (7) (b) for non-independent advice services. Again, such a difference in treatment does not make any sense to AMAFI and FBF and such payments should be authorized in all cases, the reason being that they do not generate any conflict of interests.

[1] Under the proposal suggested by the European Commission, Article 24a(1) would read as follows: "*Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client*".

[2] ESMA, Q&A on MiFID II investor protection, ESMA35-43-349, 19 November 2021, Section 12.1, p. 106.