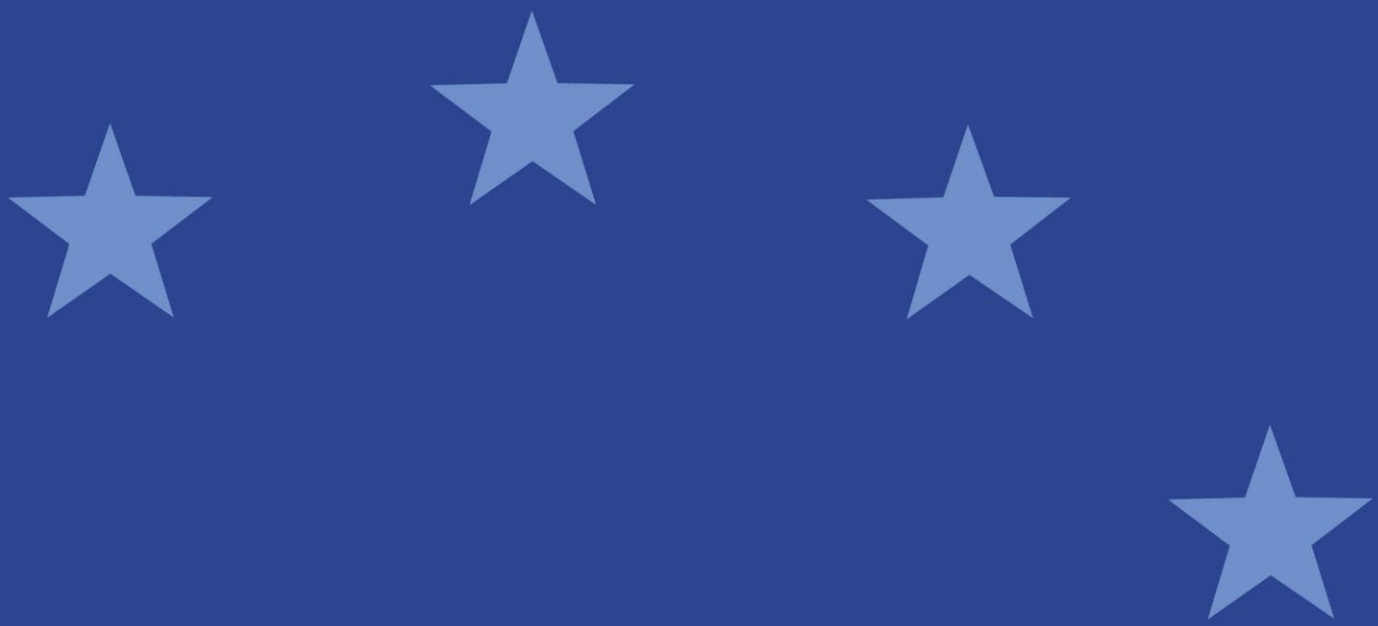
esma European Securities and Markets Authority

Final Report

Guidelines on cross-selling practices



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Acronyms and definitions used

AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Manager Directive
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
ESA	European Supervisory Authorities
ESMA	European Securities and Markets Authority
IDD	Insurance Distribution Directive
KID	Key Information Document
MCD	Directive on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive)
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive (recast)
PAD	Payment Accounts Directive
PRIIPS	Packaged retail and insurance-based investment products
PSD	Payment Services Directive
UCITS	Undertakings for collective investment in transferable securities
UCPD	Unfair Commercial Practices Directives

1 Overview

Background

1. On 22 December 2014, the Joint Committee (JC) of the European Supervisory Authorities (ESAs) published a consultation paper containing draft guidelines on cross-selling practices ("Consultation Paper on guidelines for cross-selling practices" - JC/CP/2014/05) and provided a three-month period for interested stakeholders to respond to the consultation.

2. The JC developed the draft guidelines contained in the consultation paper on the basis of Article 16 of each of the ESAs regulations (ESAs' Regulations) [1] and the requirements regulating the conduct of firms operating in all sectors within the scope of the ESAs. The draft guidelines also aimed at complying with the specific requirement of Article 24(11) of MiFID II which requires ESMA, in cooperation with EBA and EIOPA, to develop guidelines for the assessment and the supervision of cross-selling practices.

3. Each ESA also sought the advice of their respective Stakeholder Groups, i.e. the Securities and Markets Stakeholder Group's (ESMA), the Banking Stakeholder Group (EBA) and the Insurance and Reinsurance Stakeholder Group (EIOPA).

4. The ESAs received 41 responses in total (36 non-confidential responses; 5 confidential responses) from firms, industry associations and consumer bodies.

5. Since the publication of the consultation paper in December 2014, concerns have been expressed by a few competent authorities and some stakeholders regarding the adoption or the application of the joint guidelines in the context of some directives in the insurance and the banking sectors.

6. Further to the consultation, the ESAs closely and effectively cooperated, in the JC context, to review the responses received. Due to concerns regarding the legal basis provided in current insurance and banking directives, and considering the legal obligation for ESMA to adopt guidelines in accordance with Article 24 (11) of MiFID II by 3 January 2016, the JC concurred that the guidelines should be adopted by ESMA on the sole basis of MiFID II.

7. For this purpose this Final report applies to cross-selling practices within the meaning of MiFID II (i.e. the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package). Consistently with the narrower scope of this Final report, the definition of "Firms"

[1] Regulation (EU) No 1093/2010 (EBA Regulation); Regulation (EU) No 1094//2010 (EIOPA Regulation); Regulation (EU) No 1095/2010 (ESMA Regulation).

included in the consultation paper has been modified in order to only include the following financial market participants: investment firms, credit institutions when providing investment services, management companies and external AIFMs when providing services respectively allowed under Article 6(3) of the UCITS directive and Article 6(4) of the AIFMD.

8. Responses to the consultation have been analysed by the three ESAs. Responses received will also be carefully considered by the three ESAs in the context of any future cross-sectorial work in this area.

9. The result of ESMA's assessment is presented in the 'feedback' section of this report. It should be mentioned that many responses from stakeholders referred to the application of the guidelines under sectorial directives in the banking and insurance sectors. For the sake of completeness, ESMA, in cooperation with EBA and EIOPA for their respective sectors, has summarised replies received, including when such replies were discussing the interaction of the guidelines with banking and insurance directives. However, considering the narrower legal basis of this final report compared with the consultation paper, the feedback is provided by ESMA only to the extent that the issue raised is relevant pursuant to MiFID II and falls within the remit of ESMA.

10. In this context, ESMA acknowledges that other conduct of business standards (as laid down in sectorial EU legislation other than MiFID II) may apply to products or services which are cross-sold with an investment service by a firm. Nothing in these guidelines intends to affect firms' obligations to comply with such applicable requirements.

11. The guidelines contained in this final report indicate to competent authorities, through high-level principles and practical examples, ways to ensure that firms can comply with the general conduct of business standards toward clients that are expected of firms in the context of cross-selling practices. Specifically, the guidelines aim, inter alia, at:

    a) improving the content of disclosure on price, costs and other non-price features when different products are cross-sold with one another;

    b) requiring that all relevant information is communicated in a timely and prominent manner;

    c) improving client understanding of whether the purchase of the individual products is possible;

    d) addressing training and remuneration aspects, and

    e) clarifying the application of any post-sale cancellation rights attached to the purchase of one of the products.

12. The guidelines apply irrespective of the sales channel used.

Contents

13. This final report sets out ESMA's feedback to the consultation paper responses. It contains a summary of the responses received in relation to each question posed to stakeholders in the consultation paper. It also indicates whether and where ESMA has changed the guidelines following the consultation.

14. The section below sets out the feedback statement. Annex 1 lists questions raised in the consultation paper. Annex 2 provides the legislative mandate on the basis of which ESMA is issuing guidelines. Annex 3 sets out ESMA's view on the costs and benefits associated with these guidelines. Annex 4 contains the advice received from the Securities and Markets Stakeholder Group. Annex 5 contains the full text of the final guidelines. Examples of detrimental cross-selling practices are set out in Annex 6.

Next Steps

15. The guidelines in Annex 5 and the examples in Annex 6 will be translated into the official languages of the European Union, and published on the ESMA's website and will apply from 3 January 2017.

2 Feedback Statement

1. In this section, ESMA provides a detailed feedback to the responses to the consultation, both in relation to general comments received and in reply to the specific questions raised in the consultation paper.

2. In general terms, the key changes to the guidelines in light of the feedback received are as follows:

   a) Reference to directives and regulations in the banking and insurance sectors and reference to entities covered under those pieces of legislation has been removed. Consequently, the guidelines now only refer to entities covered by directives falling under ESMA's remit and cover cross-sold packages that include at least the provision of an investment service. Some illustrative examples in the guidelines which referred to packages of banking and insurance products, without any investment service involved, have also been deleted.

   b) In relation to guideline 1, ESMA has clarified that, where costs cannot be calculated with precision on an *ex-ante* basis, firms should be able to provide the client with an estimation of these costs based on reasonable assumptions. In addition, ESMA has clarified that, in order to comply with the guidelines, firms should be able to rely on information they provide in accordance with Union law (for instance, information included in a KID under the PRIIPs Regulation).

   c) In response to the feedback received in relation to guideline 7, ESMA has amended this guideline to make it clear that the use of either pre-ticked "yes" or "no" sales boxes are not in the interests of clients and should not be used by firms to facilitate the selling of one product with another. This change follows comments from a number of respondents that a sales box pre-ticked to "no" could equally lead to negative consequences for clients as a result of 'default inertia' as a sales box pre-ticked to "yes".

   d) In addition, in relation to guideline 7, ESMA has also clarified that firms are not being obliged to disclose the price and non-price information of competitor firms' component products following the querying by many respondents as to whether this was the case.

General comments

3. A number of respondents representing the industry challenged the compatibility of the content of the draft guidelines with the legal framework deriving from the sectorial legislation, especially in the insurance and banking sectors.

4. More specifically, these respondents expressed the view that some of the guidelines aimed at extending to the banking and insurance sectors conduct of business requirements which are not provided by Level 1 legislation applicable in these sectors.

5. A number of respondents representing the banking industry noted in particular that the directives referring to cross-selling in the banking sector (namely, MCD, PSD and PAD) do not contain provisions of a kind similar to Article 24(11) of MiFID II, which gives ESMA a clear and explicit empowerment to issue guidelines. These respondents considered that the ESAs' decision to issue draft joint guidelines applicable to banking products and services covered by MCD and PAD lacked legal basis. Some of these respondents also noted that the absence of harmonisation in legislation was the outcome of an intentional political decision that cannot be overruled through guidelines. Some of the respondents therefore also held the view that the guidelines must remain very general in order to ensure compliance with different legislative texts in the different sectors.

6. Other respondents expressed concerns on possible conflicts with sectorial legislative provisions and used examples related to pre-contractual information, price and cost disclosure under MCD and PSD and tying under MCD.

7. With regard to the suggestion that the guidelines should remain general, also considering the various products included in a cross-sold package, ESMA notes that the guidelines are indeed rather general. Furthermore, as already clarified in the consultation paper, nothing in the guidelines is meant to affect firms' obligations to comply with any requirements in the applicable sectoral legislation.

8. The majority of respondents representing customers' interest were rather supportive of the guidelines. Some of them however argued that the impact of the guidelines would be quite limited compared to the detriment actually suffered by clients of financial institutions.

9. Some respondents also requested modifications to the definition of "customer" in the draft guidelines and requested to limit their application to natural persons by stressing that cross-selling to "consumers" only should be addressed by the guidelines.

10. ESMA has replaced references to 'customers' (which was valid terminology in a cross-sectorial context) to references to 'clients', in order to align the terminology with the narrower scope of ESMA guidelines. In compliance with the scope of Article 24 (11) of MiFID II, the term 'client' must be understood as encompassing retail clients (within the meaning of subparagraph 11 of Article 4(1) of MiFID II) and professional clients (within the meaning of subparagraph 10 of Article 4(1) of MiFID II)[2].

[2] See also Article 30(1) of MiFID II which sets that Article 24(11) of MiFID II should not apply to the relationship with eligible counterparties.

Question 1 - Do you agree with the general description of what constitutes the practice of cross-selling?

11. The consultation paper defined cross-selling as the practice whereby firms group, and sell, two or more separately identifiable products or services in a 'package'. The majority of the industry, while broadly agreeing with the definition of cross-selling, suggested some modifications to it.

12. Respondents from across the three sectors raised some issues with the interaction of the term cross-selling with the terms 'bundling' and 'tying' and requested further clarification and/or refinement of the definition of both bundling and tying in order to be clear about the scope of the guidelines.

13. A majority of respondents argued that the current definition is drawn too widely and would capture a firm selling two 'connected' or 'linked' products even where the firm does not intend to sell them as part of a package. Respondents raised some issues with the term 'package' in the definition and suggested modifying the definition of cross-selling to exclude from the guidelines any scenario whereby products are sold simultaneously or consecutively, but not formally as part of a package.

14. A number of suggestions were put forward by respondents to refine the definition of cross-selling contained in the consultation paper. These suggestions included:

    a) Amending the definition to both bundling and tying – however the specific amendments varied widely amongst respondents;

    b) Amending the definition to make it clear that the bundle or tie is offered by a single provider;

    c) Taking account of temporal considerations. Some respondents argued that the definition of cross-selling should only apply to products sold simultaneously/at the same time rather than consecutively/at a later time from the core product where they argued that the guidelines would have lesser application;

    d) Clarifying the term 'component product';

    e) Clarifying that it is not the intention of the guidelines to prohibit cross-selling of packages which also include non-financial components; and

    f) Confirming the exclusion of PRIIPS, as defined by the PRIIPS Regulation, from the scope of the guidelines.

15. The majority of the consumer representatives agreed with the definition of cross-selling as proposed in the consultation paper, without suggesting any modifications. One respondent did suggest that the definition should be extended to include all activities of selling 'related' products or services following client acquisition whether directly by the firm itself or by an intermediary.

16. ESMA would like to recall that proposed definitions of ‘tied package’ and ‘bundled package’ are consistent with the description of these practices provided in MiFID II.

17. It is also important to clarify that the guidelines seek to address those situations where a firm sells a product and then ‘adds on’ one or more additional products – either simultaneously or indeed subsequently. In this scenario there is typically some form of ‘interrelationship’ between these two products in that either the firms want to sell both products to the client in their own right or because one of the products can encourage the client to buy the other.

18. This, in ESMA’s view, would constitute a ‘package’ in the context of these guidelines. If, for example, a firm sells two unrelated products, even simultaneously, following an autonomous client’s request, this situation would not qualify as cross-selling in accordance with the guidelines. ESMA considers therefore that the guidelines are sufficiently clear in this respect and aligned with the legislation. The factual assessment of specific cases will allow identifying situations in which two completely distinct transactions would not constitute a bundled or tied package for the purposes of these guidelines, since there was no joint offer by a firm.

19. With regard to PRIIPs, ESMA can reaffirm, as already indicated in the consultation paper, that products falling within the scope of PRIIPS do not qualify as tied and bundled packages and therefore lie outside the scope of these guidelines.

20. On the cross-selling of packages which also include non-financial components, ESMA confirms that the guidelines do not aim at prohibiting the sale of this type of packages. As clarified in the consultation paper, the focus of the guidelines is on cross-selling of packages of financial services bundled with other financial services and products. The principles included in the guidelines can however provide useful standards to supervise the sale of packages which include non-financial components. Furthermore firms should not include non-financial components for the purpose of circumventing the guidelines.

Question 2 - Do you agree with the identified potential benefits of cross-selling practices?

21. The majority of respondents representing the industry agreed with the benefits identified in the draft guidelines. However, a large number of these respondents noted that the length of the description of benefits and detriments were not balanced and unduly implied that detriments significantly outweigh benefits.

22. Several respondents suggested that an additional benefit be mentioned in the guidelines, namely that cross-selling may in certain circumstances enable clients to learn about a product they do not know about and which can be of interest for them.

23. Some of the respondents representing customers' interests did not fully support the description of benefits notably noting that no or little evidence was provided to support the relevance of the listed benefits.

24. ESMA's aim was to discuss both the potential benefits and detriments associated with cross-selling practices and not to signal any outweigh of detriment over benefits in relation to such practices. Possible benefits and detriment were listed on the basis of common views around them. At last, ESMA would like to clarify that its main focus was to discuss aspects of cross-selling practices which were of significant relevance for the purpose of establishing level 3 guidelines. These aspects are inherently more present in the detrimental aspects of cross-selling than in the beneficial ones.

25. On the basis of the suggestions received from respondents, ESMA confirms that the possibility for clients to learn about new products may be an additional potential benefit of cross-selling practices.

Question 3 - Do you agree with the identified potential detriment of cross-selling practices?

26. The majority of respondents representing the industry did not support the description of detriments listed in the consultation paper.

27. Several respondents noted that the detriment listed in the guidelines refer to commercial practices which are (i) not occurring specifically in the context of cross-selling and which are (ii) already covered by non-financial legislation (such as the UCPD). Some respondents expressed concerns about the confusion between detrimental effects of certain cross-selling practices and detrimental effects of unfair commercial practices.

28. A number of respondents, echoing their concerns expressed in their answers to question 2, noted that the description of benefits and detriments were not balanced and unduly implied that detriments significantly outweigh benefits.

29. The majority of respondents representing customers' position supported the detriments listed in the draft guidelines. Many of these respondents suggested that the lowering of the level and quality of information received by clients be factored as an additional example of client detriment.

30. As further discussed in relation to question 4, ESMA is of the view that the provisions of the UCPD are not an obstacle to the agreement of level 3 guidelines which do not contradict the provisions of the UCPD.

31. On the basis of the suggestions received from respondents, ESMA confirms that the lowering of the level and of the quality of information may represent an additional potential detriment of cross-selling practices.

Question 4 - Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.

32. The majority of respondents representing the industry commented negatively on the examples provided. Several of these respondents indicated that the examples provided were not contributing to a better understanding of the suggested application of the guidelines. A few respondents also noted that examples provided were very theoretical and had no or very little illustrative value.

33. The majority of respondents representing customers agreed that the examples all demonstrated very detrimental behaviours. However, some of them noted that it would be beneficial to select examples more directly in relation with detrimental situations actually suffered by clients as reported by competent authorities.

34. A large number of respondents, notably from the industry, noted that examples 1, 2, 3 and 4 describe unfair commercial practices already covered by the UCPD. Several respondents expressed the view that example 1 and, to a lesser extent, examples 2 and 3 were not relevant in the context of a tied offer.

35. A number of respondents also expressed the view that the examples were not representative of any actual market practice and noted that firms pursuing such type of practices would expose themselves not only to legal and regulatory sanctions under the existing legal framework but also very serious reputational damages.

36. In addition to the general remarks above, respondents made some additional remarks in relation to examples 3, 4 and 5 (as numbered in the consultation paper), including:

    a) Example 3: Some respondents suggested that the example be further clarified as, in certain cases, the insurance may subsist even when the main financial product is cancelled.

    b) Example 4: A number of respondents noted that this example was not really relevant for short-term commitments. Several respondents also noted that 'disproportionate early termination' charges were in practice unlikely to be charged to clients considering that this type of charge were usually calculated based on a pre-agreed fee structure guarantying clients a fair treatment.

    c) Example 5: Several respondents expressed concern about example 5 noting that it implicitly requires firms to make assessments about their clients which are in practice very difficult and burdensome to make.

37. ESMA would like to clarify that these negative examples have been introduced in order to comply with the requirement, sets in Article 24(11) of MiFID II, to indicate "(…) *in particular, situations in which cross-selling practices are not compliant with obligations laid down in paragraph 1* (of article 24)". Therefore these examples are additional to the guidelines and do not intend to illustrate how a specific guideline should be applied. In this context, the intention was to provide examples which reflect practices evidently

unacceptable and willing to create obvious detriments for clients irrespective of the sectorial legislative framework applicable. For this reason, ESMA agrees that some practices would have serious reputational consequence; this circumstance however further supports the inclusion of these examples.

38. ESMA did not identify any legal conflict in relation to the fact that some of the examples provided in the draft guidelines may fall within the scope of the UCPD. The negative examples provided are intended to describe poor/bad practices of firms. As such, some of these practices may, under certain circumstances, be characterised as unfair commercial practices in accordance with the UCPD. ESMA notes that Article 24(1) of MiFID II also includes overarching requirements concerning the fair treatment of clients. A firm pursuing unfair marketing practices could therefore be in breach of its regulatory obligations under MiFID without this being an impediment to the enforcement, by the relevant national authorities, of the provisions of the UCPD.

39. ESMA has clarified the context of example 3 and 5 to address comments received from a few respondents. ESMA would like to clarify that, consistently with the scope of this final report, the examples provided apply to situations in which the package cross-sold by a firm includes an investment service.

Question 5 - Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates

40. Industry respondents from all three sectors generally recognised the merits of supplying clients with information in order for clients to make an informed decision. However industry representatives from both the insurance and banking sectors were critical about certain aspects of these guidelines. Many respondents from these sectors believed that existing legislation is already sufficient and provides clients with all the necessary information they require.

41. The representatives of clients were in favour of these particular guidelines but felt more could be done to protect clients from the practice of cross-selling which on the whole they viewed as being largely detrimental to client interests. Indeed, two of these respondents believed recent legislative efforts do not go far enough and suggested proper curtailment through a ban of tying is proportionate and warranted.

42. More specifically, the industry response to these particular guidelines on disclosure was mixed. Many respondents were against the type of disclosure the guidelines currently require, especially in relation to banking and insurance products, and cited the following reasons:

    a) The challenge of separating out the component prices of a package. This point is made with particular reference to a tied package where a number of respondents mentioned that prices could not by their nature be disaggregated if the component products are not available/exist separately. In light of this difficulty, many respondents

believed that the guideline should be amended to include the wording “when available separately”.

b) Disclosure in line with the guidelines would result in ‘information overload’ for clients.

c) Greater clarification of what is meant precisely by ‘costs’ and ‘prices’ would be appropriate. Also, clarification is sought on the term ‘a clear breakdown and aggregation of all relevant costs associated with the purchase of the package’ with one firm querying whether this would include factors such as remuneration to sales agents.

d) With particular reference to guideline 5, respondents repeatedly argued that this guideline required further clarification in terms of what is meant by ‘key non-price features and risks’ and further argued that it was relevant only to ‘investment products’ and not relevant for instance to the mortgage market where, argue respondents, there is no such level 1 mandate.

43. In addition to the above, specific arguments were developed having in mind insurance products and services.

44. In response to the feedback received in relation to the provision of the prices of the components of a package, ESMA considers that relevant information should be provided for any cross-sold package in order to raise client awareness and improve information available to them.

45. In regards to the point made about overloading clients with information as a result of adhering to guidelines 1 and 5, ESMA would like to reiterate that the aim of these guidelines is to ensure that clients have all the relevant information which enables them to make informed purchase decisions. ESMA does not agree that disclosure of information on price and costs would be detrimental to clients because this information is key for clients and is consistent with MiFID II requirements on disclosure of costs and charges. Moreover, ESMA has modified guidelines on disclosure of risk and other non-price features to clarify that, in that case, only key information have to be given to clients.

46. ESMA notes the requests for greater clarification under guideline 1 on what is meant by costs and prices, and the appropriate degree of disaggregation implied in adhering to this guideline. ESMA wishes to clarify that the guideline requires that a clear indication of the total price of the package is given in the headline price that is advertised by firms in all their sales material. This means that any underlying or additional costs and charges which the client would accumulate as a result of purchasing the package like those highlighted in guideline 1 i.e. administration fees, transaction costs etc. should be fairly reflected in the price advertised and are not ‘discovered’ by the client at a later stage after purchase.

47. ESMA recognises that disclosure prior to purchase of some costs which may accumulate after the sale of a package (perhaps because they arise on a variable basis) may pose some challenges. Therefore, ESMA is of the view that in such instances where costs cannot be calculated with precision before the purchase, firms should be able to provide the client with an estimation of these costs based on reasonable assumptions.

48. In response to the comment concerning the example included in guideline 1, ESMA would like to mention that the example highlights two products included in a cross-sold package, namely an interest rate swap and a variable rate loan. Therefore, the example seeks to underscore the importance of a firm disclosing price and cost information when selling a primary product (the loan) with a secondary product (the interest rate swap to hedge interest rate risk) in order for clients to comprehend the financial implications of purchasing the package. Therefore, ESMA considers that the example presented is pertinent in the context of the cross-selling guidelines.

49. In view of the feedback received, ESMA has also amended guidelines 1 and 5 to make it clearer that those costs which cannot be calculated with precision on an ex ante basis but nevertheless are expected to be incurred by clients, can be estimated by the firm, based on reasonable assumptions.

50. ESMA would like to clarify that, in order to comply with the guidelines firms may of course rely on information they provide in accordance with Union law. For instance, where a component product is a product for which a KID has been prepared, firms will be able to rely on information included in the KID for the purpose of complying with guideline 1 on price and cost disclosure of that component product.

Question 6 - Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

51. The response from industry (especially the banking and insurance sectors) to this set of guidelines, which are aimed at improving the prominent and timely display of information, was largely critical in tone, although with some exceptions. Many respondents appear to have conflated the issue of the prominence and timeliness of information with the disclosure requirements raised under guidelines 1 and 5.

52. As a general response to this set of guidelines on the prominent and timely display of information, respondents from the banking sector recognised the merits of supplying clients with ‘comparable’, ‘understandable’ and ‘complete’ (‘but not overwhelming’) information prior to the signing of a contract, in order for clients to make informed decisions. However, they argued that in practice delays can occur in providing relevant information to clients.

53. A number of trade associations representing the banking sector in relation to guideline 2 (but also in relation to all the guidelines referred to in question 6) noted that existing

sectorial legislation under MiFID II, UCITS, PRIIPs already ensures the provision of pre-contractual information in relation to price and costs before a client is bound to an agreement.

54. Five trade associations commented on the provisions in guidelines 3 and 6, which seek the use of clear and simple language in promotional material, that 'technical terms' and 'legal jargon' cannot always be avoided or simplified as they may be required by law. Several of these respondents cautioned also that the wording in the guideline 'in a simplified or jargon free language' may lead to inconsistent interpretation across Member States.

55. Other respondents went on to address that part of guideline 3 relating to the relative prominence of key information and took issue with the example on font size included to support the guideline. Some of these respondents noted that aside from this example exceeding the level 1 texts, it was also going too far by encroaching upon firms' marketing and advertising freedoms.

56. Guideline 2 on the provision of information in 'good time' to clients was supported by a number of respondents from the insurance sector. However in relation to the provision of information on the 'price/premium' and 'any additional cost' respondents cautioned that not all costs in the premium should be disclosed as it would 'overload' clients.

57. In addition to the arguments made by the banking sector on guideline 3 about the use of the same font size, some respondents from the insurance sector also argued that where firms sell products designed both by themselves and other firms, they do not have full control of the other firm's design and property rights on certain components of the package and therefore they may not be able to influence this aspect of their marketing material.

58. A respondent from the investment sector, noted that the responsibility for adherence to the guidelines under question 6, falls to the product producer/manufacturer and not the distributor and asked that the guidelines specify that the producer is obliged to provide the distributor with information that is accurate and clear and easy for the distributor to understand from a technical point of view.

59. A respondent from the investment sector queried the use in guideline 2 of the term 'in good time before the client is bound to the agreement'. The respondent pointed out that this wording is problematic since clients may (depending on national law) benefit from 'cooling-off periods' and post-sale cancellation rights and therefore recommended the wording be changed to reflect this. They suggested adding: "in good time before the conclusion of the contract".

60. In general terms, the representatives of customers strongly supported the guidelines under question 6 in order for clients to make the optimal purchase choice.

61. ESMA has considered concerns raised by stakeholders in relation to this question very carefully and would like to reiterate that these guidelines aim at ensuring the timely and prominent display of the information required under guidelines 1 and 5. In cases where the accompanying information to a product which is being cross-sold with another product cannot be disclosed at the same time, firms should endeavour to disclose as much information (outlined in guidelines 1 and 5) as possible, upfront and in tandem with the purchase of the primary product. It is ESMA's view that failure to provide the client with sufficient information before the purchase of the cross-sold package would not be in line with these guidelines or in the interests of clients where it would result in clients being unable to make an informed decision and to understand the risks related to the purchase (where risks are relevant).

62. While the use of certain legal and technical terms is sometimes unavoidable, it is ESMAs' view that when products are being promoted to clients every effort should be made to simplify the language used. ESMA is not convinced that the national law prevailing in any Member State would prevent a firm from using clear language in their sales material and explaining any technical terminology in simple language or limiting the use of more technical terms to legal documents such as a firm's terms and conditions. The guidelines have been modified to further clarify this point.

63. In response to the concern expressed by some stakeholders in relation to potential interference with a firm's commercial freedom to design its own marketing material and websites, ESMA would like to point out that firms have 'commercial freedom' to ensure simple language is used in all marketing material and mediums to promote cross-sold products.

64. In regards to the concerns raised by some respondents (on guideline 3) around the use of font size, it should be stressed that in requiring equal prominence of the price and cost information of the component products, EMSA is seeking to limit key product information being presented to clients in a misleading way which could result in clients making purchases which may not be in their best interests. ESMA is of the view that requiring equal prominence of information for example through the use of equal font size, is a proportionate response to limit consumer detriment and should not therefore be interpreted as unduly interfering with the commercial freedoms of firms. Further, ESMA would like to point out that if a product is cross-sold with another and a firm believes that this combination of products can confer benefits on clients, then it would be indeed be in the firm's interests to promote the benefits to clients in a clear, transparent and prominent manner which would include in ESMAs view, ensuring equal prominence of the information related to the component products. This being said, ESMA would like to underline that the reference to font size was included in the illustrative examples and not in the guideline itself and that consequently other ways/tools can be used by firms to ensure that equal prominence is given to relevant information.

65. In a related point (again specifically on guideline 3), ESMA wishes to underline that wherever a firm encourages a client to purchase one product with another, they must

take all necessary steps to comply with guidelines 2, 3, 4 and 6. Therefore ESMA anticipates that if a firm controls a component product and not another product, then, to ensure equal prominence (as per guideline 3) such firm may, for example, bring the 'appearance' of their product more into line with the appearance of the product over which it has no control.

66. Similarly, in response to the point raised about the responsibility for the appearance of a component product laying with product manufacturers rather than distributors, ESMA would encourage distributors to engage with product manufacturers to ensure the dissemination of key information on their products which is in line with this set of guidelines. Furthermore, ESMA would also point out that if a distributor is aware that the information on a component product (and therefore of the package) is not sufficiently clear, prominent and timely, then the distributor should choose to sell products from other manufacturers which can achieve compliance with the guidelines 2, 3, 4 and 6.

67. ESMA has considered the comment made in relation to the term 'in good time before the client is bound to the agreement'. ESMA would like to clarify that the language proposed in the consultation paper and the wording proposed by the respondent aim at the same objective. In particular, the wording in the consultation paper does not intend to interfere with the operation of any cooling-off period or post-sale cancellation right. ESMA notes however that the language proposed in the consultation paper is in line with existing legislation (Article 27(1) of Directive 2006/73/EC) and is not modifying it as a result of the consultation.

68. In view of the comments made in relation to question 6 of the consultation paper, ESMA sees no further reason to amend guidelines 2, 3, 4 and 6. ESMA believe that this important set of guidelines as currently drafted achieves the right balance and outcome to protect clients and ensure informed decision-making of cross-sold bundled or tied packages whilst leaving flexibility to firms on how to comply with them.

Question 7 - Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

69. Responses received from the industry (especially the banking and insurance sectors) to this guideline which is aimed at improving the information around whether the purchase of a package of products is optional, were very mixed with an almost equal number of respondents expressing support and opposition.

70. Industry respondents opposing the guideline cited a variety of reasons, including:

a) Influencing how firms designed their internet pages was 'excessive'. These respondents hold the view that firms should be able to create their own internet pages 'as they see appropriate' and in accordance with relevant legislation.

b) Pre-setting purchase options to 'No' instead of 'Yes' would not provide adequate safeguards and exposes the client to potential harm. One respondent illustrated this point by citing the example of a 'cap option' on a variable rate loan where a 'No' default could expose the client to rate risk. This view was also echoed by some respondents from the insurance sector, arguing that pre-setting internet boxes to 'No' could equally risk poor client outcomes because of 'default inertia' and could result in missing out on products which they may actually need. Equally, some respondents argued that neither 'yes' or 'no' defaults should be used because of default inertia. Others supported both 'yes' and 'no' default options being used simultaneously in order to give the client a real choice and maximize their inclusion in the decision-making process.

71. One major respondent from the banking sector offered unequivocal support for firms moving away from 'opt-out' default settings, noting that their use does indeed result in detrimental outcomes. Another respondent highlighted that default options are not confined to the internet and asked for clarification (or explicit reference) that this guideline applied equally to other sales and marketing channels.

72. Two insurance representatives also offered support for guideline 7, stating that they agreed internet defaults should require a client to choose a product or element of cover arguing that such a guideline would ensure that clients make a conscious purchasing decision through an 'opt-in' mechanism.

73. Some respondents from this sector also queried whether the guideline is obliging firms to provide information on component products from competitor firms. This same issue was raised by some respondents from the insurance sector who formally asked that it is made explicitly clear that the requirements under guideline 7 does not oblige firms to inform the client about component products from rival firms but only about whether components are available separately from that same firm.

74. One respondent argued that the wording of guideline 7 implied that firms are required to sell component products separately.

75. The consumer representatives were strongly in favour of guideline 7 noting also that its supporting illustrative examples demonstrated good practice. One organisation suggested a rewording of paragraph 23 of the guideline "(…) *enables customers to actively select a purchase' to requires customers to actively select a purchase*".

76. In response to the argument that adherence to this guideline would represent an unnecessary intrusion into firms' commercial freedom, ESMA notes that the principal purpose of these guidelines is to enhance the degree of protection clients receive where they are cross-sold one product with another and that this guideline is therefore a proportionate provision to ensure clients can make informed purchase decision in these circumstances.

77. ESMA takes note of the arguments put forward by some respondents in relation to the use of pre-ticked sales boxes. Aware that clients rarely 'untick' or reverse the pre-set decisions firms make for them, ESMA has proposed in the draft guidelines to prevent the use of sales boxes which are pre-ticked to "yes" (i.e. require the client to actively opt-out of the purchase of a secondary or additional product) by the firm. However, ESMA accepts the arguments made by stakeholders that a sales box pre-ticked to "no" could equally lead to negative consequences for clients as a result of 'default inertia'. ESMA appreciates the input stakeholders had into this aspect of the guidelines and as a result have amended guideline 7 in line with this feedback.

78. In response to those stakeholders asking for greater clarification around whether this guideline requires firms to disseminate information on competitor products, ESMA wishes to reassure that this is not the purpose of guideline 7 and should not be construed in such a way. The guideline merely seeks to ensure that clients are not misled on whether the purchase of an additional or secondary product after they have purchased a primary product is optional. The guideline as currently drafted requires only that a firm alerts its clients to the fact that the component products can be purchased separately from the same firm and that the purchase of one product is not conditional upon the purchase of another where this is the case. The guideline obligates in no way a firm to provide information about another firm's component products or packages.

79. Similarly in response to those stakeholders asking for greater clarification around whether this guideline requires firms to sell products separately, ESMA would like to clarify that, in line with and without prejudice to existing legislation, this is not the objective of guideline 7. ESMA is seeking to ensure that clients have full information on the terms upon which they purchase a product from a firm and that in particular, they clearly understand when a purchase of an additional product is compulsory or conditional on the purchase of another product and when it is not. Clearly, informing clients that they may purchase the component products separately (where this is the case) from the same firm is not equivalent to mandating that firms sell these component products separately. It is worth noting however that the above is without prejudice to the provision of sectorial directives, such as the IDD requiring insurance distributors to offer the client the possibility of buying the good or services separately in cases where the insurance product is ancillary to the good or service.

80. In view of the remarks and recommendations made, ESMA have amended guideline 7 to ensure that the use of either pre-ticked "yes" or "no" sales boxes, whether they are presented on-line, in marketing material, face-to-face or during telephone conversations to facilitate the selling of one product with another would not be in line with the guideline. In addition, the guideline will be amended to ensure the client actively and consciously opts in to a purchase by ticking or selecting the option to buy the component product.

Question 8 - Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

81. The majority of respondents representing the industry expressed concerns with respect to the scope of guideline 8 noting that the provisions of this guideline exceeded the scope enabled by the applicable legal frameworks. Notably, a number of respondents expressed the view that guideline 8 introduces a requirement to assess each of the components of a cross-selling offer which does not exist as such in the sectorial legislations of the banking and insurance sectors.

82. A similar concern has been expressed by a large number of respondents in relation to example 1. Several respondents, notably industry representatives, also expressed the view that the differences existing at level 1 for insurance products on one side, where a demands and needs test is required and financial products where a suitability or appropriateness test is applicable, were not properly respected in the proposed guidelines.

83. Nevertheless, a number of respondents representing the industry supported or the content of the guidelines noting that it is was well-aligned with applicable inter-sectorial requirements.

84. Several respondents representing customers welcomed the insertion of the guidelines and emphasised the needs to encourage firms of all sectors to consider an assessment which could reduce the risk of mis-selling.

85. ESMA notes that the provisions of guideline 8, developed together with EIOPA and EBA in the context of joint-guidelines, were adding relevance in the cross-sectorial context. However, ESMA further notes that the application of suitability or appropriateness requirements to cross-sold packages being specifically addressed by Articles 25(2) and 25(3) of MiFID II, the provisions of guideline 8 (as provided in the consultation paper) do not add to the provisions of MiFID II. For this reason, ESMA is not retaining the provisions of guideline 8 in this Final Report.

Question 9 - Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

86. The majority of respondents generally supported the draft guidelines on training (former guideline 9 in the consultation paper – now guideline 8) and on remuneration (former guideline 10 in the consultation paper – now guideline 9). Some respondents stressed that training would be a crucial element to client protection and should be provided on a continuous basis. They also recognised that remuneration models, sales incentives and sales pressure could lead to conflicts of interest which consequently could lead to client detriment.

87. One respondent noted that the guidelines did not specifically address the benefits which producers pay to distributors.

88. One respondent claimed that remuneration policies should also take into account whether the products meet the client needs ("client satisfaction").

89. Some respondents stressed that the training should be appropriate and product related. A few respondents argued that the wording "plain language" in former guideline 9 in the consultation paper (now guideline 8) may lead to different interpretation across Member States.

90. Some respondents underlined that sale incentives as such should not be considered inadequate. Remuneration models should also remain at the discretion of the institution as much as possible. The monitoring obligation of the "senior management" in former guideline 10 in the consultation paper (now guideline 9) would be too detailed and intrusive.

91. ESMA notes that the legal term "adequate training" entails an abstract concept and also covers training on a continuous basis, if necessary. Equally, ESMA considers sales pressure as being already covered by former guideline 10 in the consultation paper (now guideline 9) requiring undertakings to establish remuneration models and sales incentives which encourage responsible business conduct, fair treatment of clients and the avoidance of conflicts of interest.

92. ESMA also notes that some legislation already entails or will presumably entail sectorial rules on remuneration, but ESMA would like to point out that former guideline 10 (now guideline 9) is of general nature and therefore compatible with current rules.

93. In relation to the absence of reference to the fee arrangements which may exist between distributors and manufacturers, ESMA acknowledges that these kinds of practices are a general potential source of conflict of interest. However they are not limited to cross-selling practices whereas former guideline 10 in the consultation paper (now guideline 9) addresses remuneration models applicable for internal payments to the sales staff aiming to "push" the sale of bundles products to customers.

94. In relation to the need to take in consideration customers' needs, ESMA notes that firms may apply further criteria as long as the principles of former guideline 10 in the consultation paper (now guideline 9) are fulfilled.

95. In relation to the reference to 'plain language' made in former guideline 9 in the consultation paper (now guideline 8), ESMA would like to stress that the use of abstract terms is a common practice in legal drafting. ESMA believes that the use of a "plain language" should ensure that the information provided is easily understood by the customers to whom the products are sold.

96. ESMA would like to point out that former guideline 10 in the consultation paper (now guideline 9) does not prevent undertakings from establishing remuneration models at

their discretion, but introduces some general principles which should be considered when doing so. It should also be emphasised that the relevance of remuneration aspects for firms justifies and requires the involvement of senior management to ensure compliance with these general principles (and without prejudice to the possibility for senior management to delegate the task to monitor this important aspect).

97. **Question 10 - Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

98. Respondents generally supported the guideline as drafted. Some respondents agreed that post-sale cancellation rights should be the same for products sold in a bundled package and separately. One respondent suggested clarifying whether in the case of cancellation, the prices that were offered for the other product(s) of the package and that are not cancelled, are still valid. Some respondents stressed that even if clients must be able to exercise their rights where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a package, the components of a package have been designed and priced to be sold together and therefore any requirement to allow cancellation of certain components of the package would prove unworkable and costly in practice. In addition, a fee is charged for a package as a whole and firms cannot accurately assess the cost or price for the individual components of the package. The impact of enforcing these requirements, which is likely to result in fewer firms offering packages, would be detrimental for clients given the price and convenience benefits.

99. The majority of respondents were also of the view that the right to split products should be clarified. One respondent was of the view that the right to split a package (and cancel certain components) could lead to the same problems as any initial obligation to sell (and/or to price) components separately, namely adverse selection. Other respondents were of the view that it should be made very clear that this is not intended to enable clients to circumvent the fact that they have purchased a package, especially if a beneficial price can only be offered in the package.

100. Two respondents suggested tightening former guideline 11 in the consultation paper (now guideline 10) by replacing "unless there are good and justified reasons why this is not realistic" with "unless there are technical links between two or more of the products which mean that one of the component products can exist only as part of a package, such as off-set mortgages".

101. Two respondents objected to the right to split the products grouped in a cross-selling offer as this was neither discussed nor envisioned in the Level 1 text of MiFID II, would go beyond the mandate for the cross-selling guidelines and would indicate that the firm is allowed to offer the products only in bundled form. In addition, respondents noted that the client has to be informed in advance whether or not the components may be

purchased separately and a requirement to disclose whether or not the components may be split subsequently and at what price should be sufficient.

102. One respondent expressed the view that the example 3 for guideline 8 did not appear adapted because they are inherent to rate-hedging products and, notably for the last phrase, because market operations are founded on this principle, particularly for companies. In this way, this guideline would prohibit any tied transaction in this sector, despite the fact that in certain cases the latter reduces the level of risk for the client. Furthermore, if the possibility is left to unexceptionally split the components of a package without a disproportionate penalty, derogations must be allowed because there are certain circumstances under which it is not possible to split a package.

103. With regard to the scope of former guideline 11 (now guideline 10), the ESMA would like to emphasise that the former guideline 11 (now guideline 10) refers only to the continuation of the cooling-off or post-sale cancellation rights and their applicability to the components within the package. ESMA is also of the view that as a part of disclosure of the information related to the tied or bundled packages, firms should inform clients about the cooling-off or post-sale cancellation rights. With regard to fees for a package and its components, see also the ESMA's analysis under guideline 1.

104. To address comments from the respondents related to the unclear wording, ESMA simplified the drafting of former guideline 11 (now guideline 10).

105. Regarding the concern of some respondents related to offers in the bundled form only, ESMA does not agree that the wording of the guidelines indicates that firms are only allowed to offer products in a bundled form. The guidelines distinguish between tied and bundled packages and former guideline 11 in the consultation paper (now guideline 10) refers to situations where the right to split cannot be exercised; i.e. the guideline specifies that the right to split does not apply when it is not possible to split the products. ESMA also notes that the guideline clearly recognises that the split of a package can well be subject to penalties (provided that they are not disproportionate).

106. ESMA would like to highlight that cooling-off period and post-sale cancellation rights, when foreseen by legislation, apply regardless whether the product is sold separately, or within the package.

Question 11 - Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

107. The majority of the respondents did not provide any specific evidence or data to feed the cost and benefit analysis of the guidelines. Four respondents commented that guidelines must be fully consistent with all relevant Level 1 texts. The IDD was particularly emphasised. Therefore any implementation should be withheld at least until adoption of the IDD and the relevant Level 2 acts, since any change in regime will cause additional costs for companies and, after being passed on, ultimately for clients.

108. Three respondents commented that the guidelines should not create additional disclosure requirements which contradict or go beyond the existing sectorial legislations. For MiFID firms, compliance with the MiFID II standards for bundled products should suffice. One respondent commented that the obligation to provide more information to clients can overwhelm them and cause detriment and misunderstanding. Another respondent suggested adding to the cost-benefit analysis the cost to clients of too much information during a sale. One respondent did not foresee any major changes to their current processes and procedures on the basis of the current draft guidelines, although would welcome clearer indications as to the precise scope of the guidelines with regard to the products and type of clients covered.

109. One respondent commented that the implementation of these guidelines for all clients (from private individuals to very large companies) and all products would necessarily entail significant costs for the rewriting of documentation, the change of sales procedures and the development of IT. Therefore, it would be appropriate to reduce the field of application by excluding certain markets, like for example those of large companies and of very simple products.

110. ESMA is pleased to hear that some respondents do already have in place processes as established by these guidelines. With regard to the scope of these guidelines, ESMA is of the view that the 'Scope' section of the guidelines provides sufficient clarity.

111. In reply to the comment relating to the potential different implementation of these guidelines to various segments of clients and products, ESMA would like to emphasise that the guidelines cannot modify or narrow down the scope of rules defined in sectorial legislation which will have therefore to be taken into account when applying the guidelines.

112. Other comments made in relation to former guideline 11 in the consultation paper (now guideline 10) mirrored comments already developed under other questions and for which feedback has been provided.

3 Annexes

3.1 Annex 1 - Summary of questions

Question 1 - Do you agree with the general description of what constitutes the practice of cross-selling?

Question 2 - Do you agree with the identified potential benefits of cross-selling practices?

Question 3 - Do you agree with the identified potential detriment of cross-selling practices?

Question 4 - Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.

Question 5 - Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 6 - Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 7 - Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 8 - Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 9 - Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 10 - Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Question 11 - Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

3.2 Annex 2 - Legislative Mandate

Article 16 of Regulation 1095/2010/EC (ESMA Regulation) provides that:

"*1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants.*

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37.

3. The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future."

Subparagraph 3 of Article 24(11) of MiFID II provides that:

"*ESMA, in cooperation with EBA and EIOPA, shall develop by 3 January 2016, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in paragraph 1*."

3.3 Annex 3 - Cost benefit analysis

Cost/benefit analysis

16. Article 16(2) of ESMA's Regulation requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines. It also states that such analyses must be proportionate in relation to the scope, nature and impact of the proposed guidelines.

17. This cost-benefit analysis (CBA) sets out an assessment of the potential costs and benefits of the proposed guidelines on cross-selling practices.

Objective of the proposed guidelines

18. Underpinning the provisions of the guidelines is the overarching principle for firms to ensure fair treatment of their clients. The purpose of the guidelines is to ensure there is an appropriate degree of supervisory convergence amongst national competent authorities so that firms' behaviours and arrangements for cross-selling practices are in line with the general conduct principles and respective sectoral legislation.

19. The evolution of the legislative framework in the different sectors is indeed consistent with the use of cross-selling by firms in the European Union. As indicated in a recent study, cross-selling practices are widespread in European retail financial markets and they involve products from different sectors[3].

Impact of the guidelines

20. This section presents a qualitative assessment of the potential costs and benefits of the proposed guidelines

Costs

21. It is anticipated that these guidelines will generate additional compliance costs for those Member States where some of the proposed provisions/principles are not currently applied and therefore supervised/monitored.

22. However, for most competent authorities the incremental costs will be minor because much of what is contained in these guidelines implies no significant change in the procedure, oversight responsibilities or resource for national competent authorities from what is currently being done to ensure compliance with existing conduct and organisational standards regulating the sale of component products.

[3] *Tying and Other Potentially Unfair Commercial Practices in the Retail Financial Service Sector*. Centre for the European Policy Studies to the European Commission: 24 November 2009.

23. When national competent authorities comply with these guidelines the firms which they individually supervise will be impacted. It is the view of ESMA that firms will already be doing much of what is being proposed in the guidelines, in order to comply with the obligations aimed at ensuring a fair treatment of clients when providing services to them.

24. However, the guidelines may imply moderate incremental costs as far as firms have to modify their existing practices/systems/training. For example, firms distributing a tied or bundled package will already provide price information to clients, however to comply with the guidelines proposed in this report they may have to amend their websites and sales processes and re-order the information to make this information clearer and more prominent to clients.

25. Since firms should normally already incur the cost of training new staff and updating the training (and training material) for existing staff, there would again be moderate incremental impact on a firm's budget to design training for staff on new bundled or tied products which better meet the demands and needs of clients.

Benefits

26. The benefits of the guidelines arise principally from improving the treatment of clients of financial institutions purchasing products in a package and increasing their protection by contributing to better information, improved training of firms' staff and provision of more suitable products. They will also reduce the risk that clients purchase packages of products that they do not need or for which they are ineligible to benefit from.

3.4 Annex 4 - Opinion of the Securities and Markets Stakeholder Group

ADVICE TO ESMA

Response to ESAs joint consultation on cross-selling (JC/CP/2014/05)

Executive summary

The SMSG welcomes the joint consultation of the European Supervisory Authorities (ESAs) on cross-selling and concur with the view that cross-selling transactions may provide real benefits to retail investors, but also offer the risk that the interests of the client is not adequately considered. We believe that the guidelines are a necessary first step to ensure fair treatment of investors by providing the necessary transparency and focusing on the need to ensure proper training of staff and to avoid remuneration policies that may distort the incentive to provide suitability and appropriateness in this kind of investment transactions.

As the SMSG finds it important that cross-selling transactions are available also for retail investors, when offered in a transparent and proper way, we stress the need to achieve a proportionate regime that balances benefits with disadvantages and we believe that the proposed guidelines fulfil this aim.

At present, supervision is probably best placed with national competent authorities, but the SMSG believes that it may in time be necessary and efficient to engage the ESAs in direct supervision of cross-selling transactions in order to secure a truly pan-European approach.

1. The SMSG welcomes the joint consultation of the European Supervisory Authorities (ESAs) on cross-selling. We concur with the view on cross-selling transactions expressed in recital 81 of MiFID II that »[t]hey can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered« and for this reason find it important that guidelines are issued to provide national competent authorities with rules that are both harmonised and cover the different areas of financial services and products covered by the three ESAs.

The proposed guidelines appear consistent with special regulation, governing investments, insurance and mortgage credit and prevent a loophole, which, in principle, might appear when financial products are bundled. The guidelines seem proportionate as they concern dimensions such as disclosure, transparency, suitability, training and remuneration of staff, which market participants already have to adhere to when it comes to individual products. At the same time the guidelines are consistent with their main purpose to strengthen protection and facilitate consumers' decision-making.

2. Before addressing the particular questions raised by the joint consultation, the SMSG would like to provide some general observations that we find important to highlight.

2.1. In financial regulation, especially where retail investors are concerned, it is often better to prevent than to cure. Consequently, guidelines should be made to prevent malpractices and not so much to establish standards of prudent behaviour that may later provide a basis for sanctioning or liability, as retail investors are often not in a capacity to seek adequate redress for any wrongs they have endured. Guidelines only serve this purpose of preventing malpractices if followed diligently by both market participants and authorities.

In respect of market participants it is of paramount importance that they internalise these guidelines and secure the proper training of staff, especially the front office staff that deals with retail investors, and that they avoid remuneration policies that may distort proper incentives of their staff. We are pleased to see that these considerations are addressed in the draft guidelines.

In respect of authorities, it remains important that they abide by the principle of a single rulebook and seek to exercise their authority and supervision in a harmonised way both to achieve a uniform level of investor protection throughout the Union and to provide a level playing field for market participants which will facilitate cross-border activity and thereby increase the competition and the number of services and products offered to European investors. At this point in the development of an integrated European financial market, supervision is probably best placed with national competent authorities, but just as this joint consultation is evidence of the need for the three ESAs to cooperate through their Joint Committee to seek a unified approach, so do we believe that it may in time be necessary and efficient to engage the ESAs in direct supervision of cross-selling transactions in order to secure a truly pan-European approach. Although cross-selling transactions by their very nature often cover different sectors, the need for market supervision would indicate a special role for ESMA in this area, which may rely on the Joint Committee to facilitate the necessary cooperation with the two other ESAs.

2.2. The problems caused by cross-selling have mostly been explored in the still new field of behavioural finance. Although not in a position to engage in a scholarly debate on the merits of behavioural finance, we find that many empirical findings correlate with common sense perceptions and every day experience of how retail investors make choices. Especially, we are convinced that when faced with cross-selling transactions including as they do a combination of services or products, retail investors may find it more difficult to make informed decisions than when confronted with the individual products or services in isolation. This is the very reason why we support the issuance of guidelines in this area.

As cross-selling transactions may offer the benefits described in the joint consultation, we find it important, however, that retail investors are not precluded from access to these transactions either in the form of outright bans on particular forms of transactions or by making the transactions so costly or burdensome for market participants that they make them exclusive for non-retail investors only. We believe that what is needed is sufficient, clear and intelligible information (transparency) and, as mentioned above, sufficient training of staff to assist retail investors in this information process and the avoidance of remuneration policies that may distort this process. Given sufficient transparency and a well-

trained and properly motivated staff, we believe that retail investors can enjoy the benefits that cross-selling transactions may offer.

The Questions raised by the joint consultation

Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?

Answer 1: Yes. We thus agree with the observation that a distinction can be made between a cross-selling offer where the combined products or services are also offered individually by the market participant and, we presume, at the same point of sale, and a tied or conditional offering, but we do not believe that the difference goes beyond the fact that in the first instance information on the alternative to the cross-selling offer is available, i.e. information about the individual products or services, which it may not be in a tied or conditional offering. Thus, the distinction is more one pertaining to transparency than of form.

Question 2: Do you agree with the identified potential benefits of cross-selling practices?

Answer 2: Yes. As mentioned above, we find these benefits important and for that reason we find it important that cross-selling offers are available for retail investors, provided, of course, they are offered in the transparent and prudent way that all investment transactions should be conducted. Regarding financial benefits, it should be clear that overall costs for the consumer do not only include those at the time of purchase but also costs that might arise in the long run should to be considered, e.g. potential tariff increases for individual services included in the package or switching costs.

Apart from the benefits described in the Consultation Paper it can be added that cross-selling packages often make consumers aware of the existence and advantages of certain products which they were not familiar with before. This, if applied in a transparent way, may help raising the level of financial consciousness amongst consumers.

Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?

Answer 3: Yes, which is why we find it important to issue guidelines in this area. We agree that in the absence of guidelines adopted by the ESAs there is a considerable risk that some market participants may act in this way. We also observe that while cross-selling transactions may result in long-term contractual relationships that may not suit the interest of retail investors as mentioned in para. 10, this may also arise in single product or service transactions and is thus a more general concern to be addressed irrespectively of the selling mode. We do agree that long-term relationships can be detrimental to consumers in some cases due to lower mobility, but benefits arising from long-term relationship in the retail financial services sector should not be overlooked. It allows a financial institution to provide products that are more tailored and more accurately priced to a well-known customer. The consumer can in turn acquire additional products and services with greater ease in the

process, avoiding the need for extensive searches or burdensome administrative procedures.

It should also be noted that several financial market's directives already provide a necessary framework, so proper enforcement of the existing regulations should be helpful in dealing with potential consumer detriment and proper actions should be taken against any breach of those provisions.

Question 4: Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.

Answer Ex. 1: Yes, it would obviously be detrimental, unless the higher costs are somehow justified by benefits arising out of the cross-selling combination of products and services, which the market participant should be able to explain and required to disclose.

Answer Ex. 2: Yes, we see this as a problem of insufficient transparency.

Answer Ex. 3: As in Ex. 1, this would be detrimental unless somehow justified by costs connected to the unbundling of the cross-selling transaction and then only where the original transaction provided the retail investor with some benefit that depended on accepting the combined transaction.

Answer Ex. 4: Obviously, if indeed the charge is deemed disproportionate taking into account the various components of the combined package. However, it should be noted that this may be detrimental in a long-term commitment, but not so serious in a short-term one.

Answer Ex. 5: Yes, we would generally say that any transaction, cross-selling or not, that provides retail investors with products or services not suited to their needs would constitute impermissible mis-selling.

Question 5: Please comment on the proposed guidelines 1 and 5 (Full disclosure of information) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 5: We consider that information disclosure alone is an important but only first step to ensure fair treatment of investors by providers and agree that sufficient transparency requires a break-down of the price between the package and its individual components in order for the retail investor to decide which to choose, as provided in Guideline 1 and 5. However, we do not believe that the market participant should be obliged to offer any or all of the individual components as a consequence of offering a package and we understand para. 15 of the summary of the guidelines as confirmation that no such obligation is intended. Where market participants do not offer one or more of the individual components, they should, if possible, disclose the price they are paying their contracting parties for a component that is provided by that contracting party.

Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 (Prominent and timely display of information) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 6: We agree with the guidelines 2 – 4 and 6. In para. 16 and 20, the phrase »jargon-free« should be taken to mean devoid of financial argot, especially technical phrases taken from the theory of finance that may be difficult to understand for laymen. Special concern should be used in respect of such technical phrases where they may be misunderstood to mean no or reduced risk, which may be particular relevant to phrases taken from portfolio theory and efficient market theory. However it should be remembered that some technical terms are required by existing legislation, so they cannot be simplified to the level of their full removal, as could be understood from para. 16. Where possible, examples should be made in final sums specifying a certain amount in euro or other currency (e.g. if you invest 100 EUR, the costs are X EUR) and risks should equally be explained with reference to final sums. In respect of para. 17, we agree but also refer to our comments re Q5.

Question 7: Please comment on the proposed guideline 7 (Optionality of purchase) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 7: We agree and would prefer that web-based options remain open, so that the retail investor must actively make a choice. Where a market participant has chosen a default option, i.e. a pre-set option that the retail investor must change to avoid, the market participant must be able to justify this based on the objectives laid out in these guidelines and the generally applicable law governing retail investor advising in respect of suitability and appropriateness, cf. guideline 8.

Question 8: Please comment on the proposed guideline 8 (Assessment of demand and needs or suitability/appropriateness) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 8: We agree and note that the requirements of suitability and appropriateness are no different in the context of a cross-selling offer than any other interaction between a market participant and a retail investor and should be subject to the same standards where advice is being offered. However distinction between advised and non-advised sales should be emphasised. Depending on product and distribution model, some firms limit their activity to the provision of information and specific explanation of the products, therefore advice should be viewed as a distinct service.

Question 9: Please comment on the proposed guidelines 9 and 10 (Training and remuneration) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 9: As mentioned at the outset we agree with guideline 9 and note that the observable increase in complexity from offering a package rather than individual products or services entails an increase in the understanding necessary of the staff that are to face the

retail investors, and market participants must ensure that their staff are trained sufficiently to possess the qualifications necessary to advice on and sell these packaged products. We also agree with guideline 10 and observe that the need to calibrate remuneration policies to avoid distorting the incentives of staff to provide proper advice and conduct is always important, also in the case of cross-selling. In respect of cross-selling where the market participant offers both bundle packages and individual products and services, remuneration policies should be neutral and not favour the sale of packages above individual sale. We do not believe that there is a case for banning remuneration policies that reward achieving certain sales targets by front office staff, nor where they include packaged offerings, but it is important to ensure that such policies do not lead staff to mis-selling, be it packages or individual products and services, and that proper training and supervision by the market participant of its staff and of the sales pressure on its staff are carried out at all times. In this respect, the SMSG believes that proper sales policies, including training, remuneration and sanctions should ideally be part of a dialogue with employee representatives where available.

Question 10: Please comment on the proposed guideline 11 (Post-sale cancellation) as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Answer 10: We generally agree that a package should offer retail investors a better deal than buying the individual products and services on their own; this should be the raison d'être of all cross-selling. However, although not sufficiently familiar with all instances of cross-selling, we believe that a cross-selling package may entail benefits and disadvantages for the retail investor, where the latter may derive from the bundling or tying of the individual components, and that the retail investor, while being protected by the general standards of suitability and appropriateness when entering into the cross-selling transaction, should not be able to cherry-pick only the benefits of a package by first entering into the cross-selling transaction and then subsequently dismantling it. Emphasis should be on proportionality, as it is in para. 29, but not explicitly in para. 28. Thus, while we agree that rights to post-sale cancellation that apply for individual products or services should normally apply also for the combined package, we believe that a package may offer less beneficial rights in this respect where this is justifiably due to the nature of the combination of products and services and is not disproportionate so as to serve mainly as a deterrent to or a penalty for exercising these rights.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 22 March 2015

Jesper Lau Hansen

Chair
Securities and Markets Stakeholder Group

3.5 Annex 5 - Guidelines on cross-selling practices

Purpose

1. The primary purpose of these guidelines is to establish a coherent and effective approach in the supervision of firms by competent authorities which will contribute to the enhancement of investor protection across Member States. The guidelines will therefore help to clarify the expected standard of conduct and organisational arrangements for those firms engaged in cross-selling practices in order to mitigate any associated investor detriment.

Scope

2. The guidelines apply in relation to cross-selling practices within the meaning of subparagraph 42 of Article 4(1) of MiFID II. In particular, the guidelines apply to the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.

3. In light of the above definition, ESMA would like to recall that other conduct of business standards (as laid down in sectorial EU legislation other than MiFID II) may apply to each of the products or services which are cross-sold by a firm or to the package resulting from cross-selling practices. Nothing in these guidelines affects firms' obligations to comply with such applicable requirements.

4. The guidelines apply to tying and bundled packages unless they are prohibited under any legislation applicable to the products or the services which are included in the package.

Addressees

5. The guidelines are addressed to competent authorities with supervisory oversight of firms subject to the following directives:

    a. Markets in Financial Instruments Directive (recast) (Directive 2014/65/EU - MiFID II);

    b. Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Directive 2009/65/EC - UCITS Directive);

    c. Alternative Investment Fund Manager Directive (Directive 2011/61/EU - AIFMD).

Compliance, reporting obligations and date of application

Status of the guidelines

6. These guidelines are issued under Article 16 of the ESMA's Regulation. In accordance with subparagraph (3) of that Article, competent authorities shall make every effort to

comply with the guidelines. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. through an amendment of their regulatory framework or their supervisory processes).

7. In accordance with Article 24(11) of MiFID II, ESMA has cooperated with EBA and EIOPA when developing these guidelines.

8. These guidelines apply from 3 January 2017.

Reporting requirements

9. Competent authorities to whom these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication of the translated versions by ESMA to cross-selling1861@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available on ESMA website.

10. Where useful to do so, the guidelines contained in the paragraphs below are followed by one or more examples. The examples indicate further how each guideline (implemented by competent authorities) might be followed by firms in practice. However, there could be other ways in which a firm could choose to put these guidelines into practice.

Definitions

2. Unless otherwise specified, terms used in MiFID II have the same meaning in these guidelines. In addition, for the purpose of these guidelines, the following definitions apply:

Firms	The following financial market participants: a) investment firms (as defined in Article 4(1)(1) of MiFID II); b) credit institutions (as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013) when providing investment services and activities within the meaning of subparagraph 2 of Article 4(1) of MiFID II; c) management companies (as defined in Article 2(1)(b) of Directive 2009/65/EC) when providing services pursuant to Article 6(3) of Directive 2009/65/EC); and d) external AIFMs (as defined in Article 5(1)(a) of Directive 2011/61/EU) when providing services pursuant to Article 6(4) of Directive 2011/61/EU.
Bundled package	A package of products and/or services where each of the products or services offered is available separately and

	where the client retains the choice to purchase each component of the package separately from the firm.
Tied package	A package of products and/or services where at least one of the products or services offered in the package is not available separately to the customer from the firm.
Component product	The separate product and/or service which constitute part of the bundled or tied package.

Guidelines on cross-selling practices

Full disclosure of price and cost information

Guideline 1

1. Competent authorities supervising firms which distribute a tied or a bundled package should require firms to ensure that clients are provided with information on the price of both the package and of its component products.

2. Competent authorities supervising firms that distribute a tied or a bundled package should require firms to ensure that clients are provided with a clear breakdown and aggregation of all relevant known costs associated with the purchase of the package and its component products - such as administration fees, transaction costs, and exit or pre-payment penalty charges. Where costs cannot be calculated with precision on an ex ante basis but nevertheless will be incurred by clients after the purchase of the package, the competent authority should require the firm to provide an estimation of these costs based on reasonable assumptions.

   Illustrative example

   When cross-selling an interest rate swap with a variable rate loan to allow a client to hedge interest rate risk (i.e. the client swaps his/her floating rate payment for a fixed interest rate payment) the firm provides key information to the client on all aspects of the swap agreement which will materially affect the cost the client finally incurs such as the client's potential payment liability when interest rates change and the exit charges from the swap contract.

Prominent display and timely communication of price and cost information

Guideline 2

3. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that information on price and all relevant costs of the package and on each of its component products, is made available in good time before the client is bound to the agreement, allowing the client to make an informed decision.

Guideline 3

4. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that price and cost information of the package and its component products is communicated to clients in a prominent, accurate manner and in simple language (with any technical terminology explained).

5. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that when promoting any of the component products that will form a bundled or tied package, firms ensure that equal prominence is assigned to

the price and cost information of these component products so that a client can properly and quickly discern the cost impact upon them as a result of purchasing both as a package.

Illustrative examples

1) In any marketing communications used by the firm, the font used to communicate the relevant price and cost information of each of the component products intended to be sold as a package is the same. Relevant information concerning one of the component products is not given more emphasis with the use of a bigger or bolder font.

2) Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both products that will form the package appears early-on in the relevant webpages and is easily navigated by clients i.e. the price and cost information of any product which will form part of the bundled package is not placed or 'hidden' further down in the firm's on-line sales form.

Guideline 4

6. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that the price and cost information is presented to clients in a way which is not misleading or which distorts or obscures the real cost to the client or prevents meaningful comparison with alternative products.

Full disclosure of key information on non-price features and risks, where relevant

Guideline 5

7. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that clients are provided with key information relating to the non-price features and risks - where applicable - of each of the component products and the package, including in particular the information on how the risks are modified as a result of purchasing the bundled package rather than each of the components separately.

Illustrative example

A firm offers a preferential rate savings account only when purchased with a structured bond. In this case, the level of risk posed by this total package is different from the risks posed by the savings account alone: the initial capital in a savings account is guaranteed, and the only variable is the interest paid. But initial capital invested in a structured investment product may not be guaranteed, and so it could be lost in part or altogether. In such example, the risk profiles of the components are clearly very different and, when combined, the level of risk associated with the structured product component could negate the safety of the savings product component to the extent that

the overall risk profile of the package is significantly increased. The firm clearly informs the client about how the risk is modified as a result of purchasing the bundled package rather than each of the components separately.

Prominent display and timely communication of key information on non-price features and risks, where relevant

Guideline 6

8. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that key non-price factors and the relevant risks are promoted to clients with the same prominence and weight as information on price and cost of the component products or bundled/tied package and these should be made clear to clients in simple language (with any technical terminology explained) in good time before the client is bound to the agreement.

9. Competent authorities supervising firms which distribute the tied or bundled package should also require firms to ensure that information on the non-price features and risks of the package is presented to clients in a way which is not misleading or which distorts the impact of these factors for the client.

Illustrative examples

1) The firm draws to the client's attention the limitations and risks (if relevant) of the tied or bundled package and the component products and guides the client through the relevant information which sets out the key benefits, limitations and risks (if relevant) of the package and the component products. The sales person explains carefully and in due time (i.e. before the client is bound to the agreement) how these non-price factors materially change according to (i) whether the component product is purchased and (ii) which component is selected. The firm alerts the client of the tied package to the overall benefits, limitations and risks (if relevant) of the package.

2) The firm refrains from exclusively relying on a general reference to their Terms & Conditions to alert or disclose to key non-price information to clients. Instead, the firm explains the risks (if relevant) and non-price information to the client in plain language.

Prominent display and communication of 'optionality of purchase'

Guideline 7

10. Competent authorities supervising firms which distribute bundled or tied packages should require firms to ensure that clients are properly informed whether it is possible to purchase the component products separately – i.e. whether clients have a choice as to which of the products they buy or, to the extent that this is permitted under sectorial

legislation, whether one of the component products has to be purchased in order for the client to be eligible to buy one of the other products from the firm.

11. Competent authorities supervising firms which distribute a bundled package should require firms to ensure that they design their purchase options in a way which enables clients to actively select a purchase and therefore to make a conscious decision to buy the component product or the bundled package. Competent authorities should therefore require firms to ensure that pre-ticked boxes (on-line or in any other sales document) are not used by firms when they cross-sell one product or service with another.

12. Competent authorities supervising firms which distribute a bundled package should require firms to ensure that they present their purchase options in a way which avoids giving a false perception that the purchase of the bundled package is compulsory when in fact it is an optional purchase.

Illustrative examples

1) A firm offers a range of different investment products). The firm sets out the client's options clearly. For example, it is clear that the client has the option to purchase an execution only service with no additional products such as market data and financial analysis. Similarly, it is clear whether the client's choice is restricted to particular bundles of component products, or if he/she has a free choice as to which ones they can combine together.

2) The purchase option for a bundled package of execution only service and markets research on the firm's sales internet pages is left blank. The client has to opt-in to the purchase by clicking 'yes' to a simple question about whether the client wants to buy the add-on product (in this case the market research) (and therefore bundled package) in addition to the 'core' product.

Adequate training for relevant staff

Guideline 8

13. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that adequate training, including cross-sectorial training when relevant, is provided to staff in charge of distributing each of the products sold as part of a package. Staff training should ensure that staff are familiar with the risks, where relevant, of the component products and the bundled or tied package and be able to communicate these to clients in plain (non-technical) language.

Conflicts of interest in the remuneration structures of sales staff

Guideline 9

14. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of clients and avoidance of conflicts of interest for staff selling the tied or bundled package are in place and are monitored by senior management.

Illustrative examples

1) The firm refrains from operating remuneration policies, practices and performance-based competitions that encourage sales staff who may be remunerated on a commission basis to 'push', the sale of the bundled package and which may therefore encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance if sales staff were incentivised to cross-sell a loan with a brokerage account, then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the loan and therefore also of the package.
2) The firm avoids remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the bundled/tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the bundled package to avoid this outcome.
3) The firm avoids reducing bonus or incentive payments earned by sales staff because a sales target or threshold for the bundled package has not been met.

Post-sale cancellation rights

Guideline 10

15. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a package (if the components were sold on a stand-alone basis), these rights should continue to apply to those components within the package.

16. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that, clients are subsequently allowed to split the products grouped in a cross-selling offer without disproportionate penalties – unless there are justified reasons why this is not possible.

3.6 Annex 6 - Examples of detrimental cross-selling practices

Examples with a monetary detriment Example 1 Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same firm (as long as products have the exact same features in both cases). Example 2 Inducing a client to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the client is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees. Example 3 Not returning a portion of the proportional part of the pre-paid premium of an insurance component of the package further to the termination of an investment service that was sold together with it when the insurance product does not remain in force.
Example with reduced mobility detriment Example 4 Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider or threatening with the termination of the contractual relationship regarding another product included in the package.
Example of purchase of unwanted or unnecessary products Example 5 Offering a product bundled with another product that has not been requested by the client when the firm is aware or should be aware that the product unnecessarily duplicates another product that the client already has and cannot benefit from (including because the customer is not eligible).