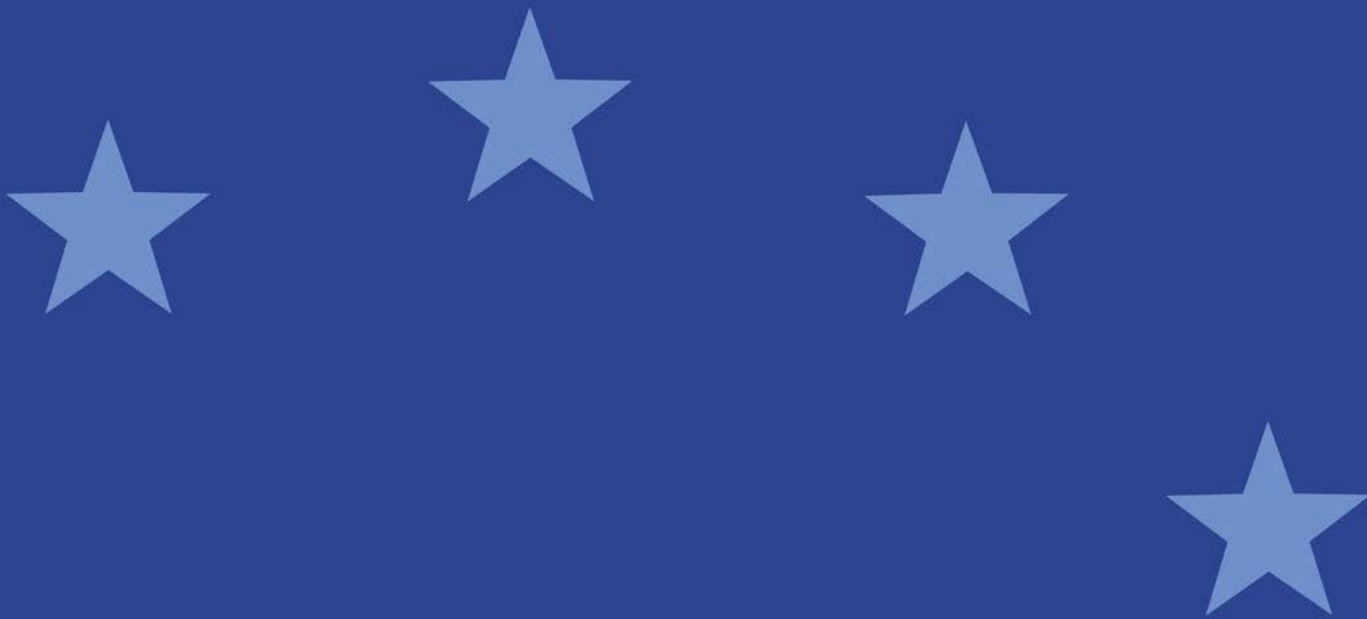


Final Report

Draft Regulatory Technical Standards on the management body of DRSPs



Acronyms used

APA	Approved Publication Arrangement
ARM	Approved Reporting Mechanism
CTP	Consolidated Tape Provider
DRSPs	Data Reporting Services Providers
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349)
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)
NCA	National Competent Authority
RTS	Regulatory Technical Standards



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1 Executive Summary

Reasons for publication

Article 27f(5) of MiFIR (see Annex I to this final report for the full text of this Article) provides that ESMA shall develop draft regulatory technical standards (RTS) for the assessment of the suitability of the members of the management body of DRSPs, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.

On 24 August 2021, ESMA published a consultation paper (CP) on draft regulatory technical standards under Article 27f(5) of MiFIR to gather input from stakeholders¹.

ESMA requested the advice of the Securities and Markets Stakeholders group (SMSG) established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ('ESMA Regulation')². The SMSG did not provide any feedback to the Consultation Paper.

The consultation concluded on 24 September 2021. Five responses were received, including the views of regulated markets, trade repositories, DRSPs and others. Amongst these, two respondents have asked for their responses to be kept confidential.

This final report provides an overview of the feedback received through the responses to the CP and details the next steps for ESMA to fulfil its mandate.

Contents

Section 2 presents the background and the mandate for the development of these RTS.

Section 3 addresses the responses received to the CP, including both – general comments as well as replies to specific questions, and highlights the changes made to the draft RTS in response to the received feedback.

Annex I sets out ESMA's mandate to develop these RTS.

Annex II contains the feedback of the Securities and Markets Stakeholders Group (SMSG).

Annex III includes ESMA's view on the cost and benefits analysis associated with these RTS.

Annex IV contains the text of the draft RTS.

Next Steps

This Final Report and the draft RTS presented in Annex IV are submitted to the European Commission for adoption. In accordance with Article 10 of Regulation (EU) No 1095/2010,

the European Commission has to decide whether to endorse the draft technical standards within three months. Following the endorsement of the draft RTS by the European Commission in the form of a Commission Delegated Regulation, the text will then be subject to the non-objection of the European Parliament and of the Council.

2 Background and scope of these RTS

2.1 Background

1. Articles 45 and 63 of MiFID II set out requirements for the management body of market operators and DRSPs respectively. Those requirements aim to ensure that the management body and each of its individual members are suitable to ensure sound and prudent management of the firms as well as exercise effective responsibility for the activities undertaken by those firms.
2. In order to clarify the suitability criteria introduced in MiFID II and to ensure the harmonised application of Union law across Member States, with the enactment of MiFID II ESMA received a mandate to issue Guidelines under Article 45(9) and 63(2) of that Directive. Article 63(2) of MiFID II required, more specifically, ESMA to develop guidelines for the assessment of the suitability of the members of the management body of DRSPs. Article 63(1) of MiFID II referenced most of the concepts outlined under Article 45 of MiFID II such as the existence of sufficient knowledge, skills and experience from the members of the management body or the commitment of sufficient time.
3. On 28 September 2017, ESMA adopted the Guidelines on the management body of market operators and data reporting services providers (“Guidelines on the management body³”).
4. On 18 December 2019, the European Parliament and the Council adopted Regulation (EU) 2019/2175⁴, which reviews the powers, governance and funding

¹ https://www.esma.europa.eu/system/files_force/library/esma74-362-2048_consultation_paper_and_draft_rts_management_body_drsp.pdf?download=1

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

³ ESMA70-154-271. Guidelines based on Article 45(9) for market operators and Article 63(2) for DRSPs of the Directive 2014/65/EU (MiFID II) clarify the requirements applicable to members of the management bodies of market operators or DRSPs. Guidelines based on Article 16 of Regulation (EU) No 1095/2010 clarify how information is to be recorded by market operators or DRSPs in order to make it available to the competent authorities for the exercise of their supervisory duties.

⁴ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments,

of the European Supervisory Authorities (ESAs) thus, among others, amending MiFIR. With regards to the changes foreseen for MiFIR by Regulation (EU) 2019/21751 (also referred to as the “ESAs Review Regulation”), is granting ESMA additional supervisory power with regard to DRSPs. In particular, these changes consist in the transfer of authorisation and supervision of DRSPs from NCAs to ESMA, other than with respect to ARMs or APAs that benefit from a derogation under MiFIR. Accordingly, provisions pertaining to the requirements for DRSPs and the competences of NCAs with respect to DRSPs set out in MiFID II (i.e. those in Title V of MiFID II, including Article 63 thereof, upon which the Guidelines for the management body of DRSPs are based) are deleted from MiFID II⁵ and introduced in MiFIR (notably, in Title IVa thereof).

5. Article 27f(5) of MiFIR⁶ mandates ESMA to develop draft RTS for the assessment of the suitability of the members of the management body of DRSPs, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the DRSP.
6. Requirements such as sufficient knowledge, skills and experience or the commitment of sufficient time, are laid down in Article 27f of MiFIR and are identical to those in Article 63(2) of MiFID II upon which the Guidelines on the management body are based.
7. Following the endorsement of the proposed RTS, ESMA will consider whether and how the Guidelines on the management body of market operators and DRSPs are to be amended.

2.2 Entities subject to these RTS

8. These RTS will apply to DRSPs. For the purpose of this report and of these RTS, “DRSP”, means an approved publication arrangement (APA) or an approved reporting mechanism (ARM) as defined in Article 2(1)(34) and Article 2(1)(36) of Regulation (EU) No 600/2014 and persons referred to in Article 27b(2) of that Regulation providing the services of an approved publication arrangement or an approved reporting mechanism.
9. While the provisions of these RTS will apply to all DRSPs, irrespectively of whether they are supervised by ESMA or National Competent Authorities (NCAs), they take

Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1).

⁵ By virtue of the provisions of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (OJ L 334, 27.12.2019, p. 155).

⁶ Unless specified, references to MiFIR provisions in the text are to be considered as to MiFIR as amended by the ESAs Review Regulation.



into account the principle of proportionality in order to clearly reflect how the requirements may take into account the size, complexity and interconnectedness of each entity. This allows limiting the burden on smaller DRSPs while guaranteeing that all entities continue to fulfil the criteria to determine the suitability of their management body contained in the draft RTS.

10. The third subparagraph of Article 27f(1) of MiFIR establishes that in case the members of the management body of a market operator seeking authorisation to operate a DRSP are the same members as the management body of the regulated market, they shall be deemed to satisfy the relevant requirements.
11. However, there is no similar provision for investment firms seeking authorisation to operate a DRSP. Therefore, investment firms willing to operate a DRSP will be subject to both these RTS as well as the existing joint ESMA/EBA Guidelines for the management body of investment firms⁷. While developing these draft RTS, ESMA made sure that there are no contradictory requirements between them and the ESMA/EBA Guidelines.

3 General Comments

12. All respondents expressed their support for these RTS on the management body of DRSPs and welcomed the clarity they provide to the market with respect to the obligations and the existing mandate for the management body of DRSPs.
13. Two respondents provided some general comments, one of them regarding the scope of the RTS and the other one requesting clarifications on the mandate for these RTS and its practical consequences.
14. One comment asked for a clarification of the mandate of these RTS, specifically whether DRSPs operated by market operators (where the members of the management body of both regulated market and DRSP are the same) are deemed to comply with the requirements of these RTS regardless of whether they have been previously authorised by an NCA or are seeking authorisation directly from ESMA.
15. Such clarification can already be found in Annex II and in section 2.2 of the consultation paper, entitled “Entities subject to these RTS”. In them, ESMA included the legislative mandate to develop these RTS, Article 27f (5) of MiFIR. In this same Article 27f of MiFIR, specifically in the third subparagraph of its paragraph 1, it is specified that “*where a market operator seeks authorisation to operate an APA, a CTP or an ARM pursuant to Article 27d and the members of the*

⁷ Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU.

management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph”.

16. Therefore, since the clarification requested is already contained in the legislative mandate and in the consultation paper itself, there does not seem to be any need to amend the RTS in response to this comment.

17. Nevertheless, it should be noted that the fact that the management body of an already authorised market operator is deemed to comply with the requirements of Article 27f (1) does not mean that said management body would be outside of the scope of these RTS. They will continue to be subject to these technical standards and will have to ensure continuous fulfilment of the criteria in Article 27f(1) of MiFIR i.e. *“The management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary”*. This means that they will need to provide all the information contained in these RTS including the information related to changes to the individuals or to the management body as a collective body itself.

18. Another respondent commented on the scope of these RTS and more specifically on the inclusion of CTPs in the scope of the draft RTS given the lack of clarity as for the future structure, business model, governance structure, funding, or remuneration of CTPs. The respondent points out certain specific provisions of these draft RTS as potentially problematic due to this lack of clarity regarding the future functioning of such entities. The avoidance of conflicts of interest between the management body of CTPs and their customer base is highlighted as one of the main potential source of problems with the inclusion of CTPs in the scope of these RTS.

19. In addition, the respondent pointed out to the ongoing review of the legal framework around CTPs. It highlights how the regulatory changes that are under consideration regarding the business model, governance, cost and operational and technical set up of CTPs, might render the inclusion of CTPs under these RTS obsolete as soon as these changes enter into force.

20. The point raised by the respondent regarding the different circumstances around CTPs and the development of a new legal framework for those entities is worth

considering for these RTS. Since the legal mandate for these RTS was drafted, and even since the publication of the consultation paper for these RTS, there has been a substantial new event concerning CTPs. On 25th November 2021 the European Commission published its proposal for the review of MiFIR and MiFID II.⁸ This proposal “addresses the reasons why no CTP has come forward. It amends the CT provisions in MiFIR to facilitate the emergence of a CTP for each asset class”.

21. Given this proposal from the European Commission to create a new legal framework for CTPs which amends the current MiFIR provisions for CTPs, it is proposed to exclude CTPs from the scope of these RTS by introducing a new Article 1. This Article clarifies that for the purpose of these RTS, DRSP means an APA or an ARM or any persons referred to in Article 27b(2) of MiFIR providing the services of an APA or an ARM. This approach is consistent with other legislative acts concerning DRSPs that have been developed and adopted by the European Commission in the last months and is an approach that the European Commission has taken itself in light of the circumstances of the proposed review previously mentioned. An equivalent article can be found in the Delegated Regulation establishing fines for DRSPs (adopted by the European Commission on 16th February 2022)⁹ and in the Delegated Regulation establishing fees for DRSPs (pending adoption).
22. In addition, although the exclusion of CTPs from the scope of these RTS might trigger changes to the RTS once the new level 1 framework for CTPs is in place, the likelihood and timing of those changes would not change if CTPs were kept within the scope of these RTS. A change in the level 1 framework of CTPs will in any case prompt a revision of all acts affecting CTPs and would therefore include these draft RTS in any case. Once the revision of the MiFIR provisions on CTPs enters into force, the requirements for the management body of CTPs will likely be developed via implementing acts.
23. Therefore, given the appearance of new circumstances regarding the legislative framework of CTPs, and in order to be consistent with other legal acts concerning DRSPs, the proposal is to exclude CTPs from the scope of these RTS by introducing a new Article 1 clarifying the scope.

⁸ 2021/0384 (COD) Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments.

⁹ Commission Delegated Regulation (EU) supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying fees relating to the supervision by the European Securities Markets Authority of data reporting service providers; and Commission Delegated Regulation (EU) supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the European Securities Markets Authority regarding data reporting service providers.

3.1 Good repute, honesty and integrity.

24. All respondents agreed on ESMA's approach regarding the way to guarantee the good repute, honesty and integrity of the members of the management body of DRSPs as well as with the specific circumstances under which this good repute, honesty and integrity were to be assessed.

Q1: Do you agree with the proposed approach of integrating the assessment of good repute, honesty and integrity in a single self-declaration of good repute? Should you disagree, please provide reasons, propose an alternative approach and justify it.

25. In ESMA's proposal in the CP, a single self-declaration of good repute was introduced in order to align DRSPs with the current requirements for the members of the management body of trade repositories (TRs). This was welcomed by all respondents as a good way to streamline their work.
26. One respondent suggested that the information contained in Article 2 of these draft RTS, including the self-declaration of good repute should be only required by DRSPs from their members of the management body, but without this information to be sent systematically to ESMA, or the NCA where relevant.
27. As a matter of consistency with the current requirements for the management body of TRs and in order to ensure these RTS create clear obligations to DRSPs towards ESMA, or the NCA where relevant, the information contained in Article 2 should be provided to the supervisor, to ensure that the circumstances that guarantee the suitability of the members of the management body of DRSPs are fulfilled at all times, as required in the legislative mandate.
28. Furthermore, the Article 27f (4) of MiFIR, clearly states that "ESMA, or the national competent authority where relevant, shall refuse authorisation if it is not satisfied that the person or persons who effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management body of the data reporting services provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market". This clearly makes it necessary for ESMA, or the NCA where relevant, to have the information available and up to date at all times. For these reasons the current drafting of the respective Article is kept unchanged.

Q2: Do you agree with the proposed circumstances under which DRSPs should ensure the re-assessment of the good repute, honesty and integrity of a member of their management body?

29. In ESMA's proposal in the CP, the following circumstances were introduced to clearly indicate to DRSPs when they have an obligation to perform a reassessment of the good repute, honesty and integrity of their management body:
- a. where there are concerns regarding his or her suitability;
 - b. in the event of a material impact on his or her reputation;
 - c. as part of the review of the internal governance arrangements by the management body;
 - d. in any event that can otherwise materially affect his or her suitability.
30. All respondents agreed with the specific circumstances proposed by ESMA. One respondent suggested a change in the approach that would make the reassessment an exclusive responsibility of the DRSPs, without the obligation to send the information to ESMA, or the NCA where relevant.
31. As for the case of the initial assessment of the good repute, honesty and integrity of the members of the management body of DRSPs, the supervised entities need to guarantee their fulfilment of the requirements in these RTS. Once this is done, it is necessary that the information in Articles 2 and 3 of these RTS is provided by the DRSPs to ESMA, or the NCA where relevant, in order for the supervisor to be able to verify the suitability of the members of the management body of those DRSPs. This is an approach that is consistent with the one taken with other supervised entities. It is for these reasons that the proposed drafting of Article 3 of these RTS is kept unchanged.

3.2 Sufficient time commitment

Q3: Do you agree that DRSPs should establish themselves the limitation to the number of simultaneous directorships that members of the management body of their DRSP can hold?

32. In ESMA's proposal, regarding sufficient time commitment from members of the management body of DRSPs, the main novelty for DRSPs with regards to the existing text of the Guidelines on the management body, was the introduction of a limitation on the number of directorships.
33. In order to keep a flexible approach that allowed all DRSPs to comply with this limitation while acknowledging the different complexity and scale of the management body of all DRSPs, ESMA decided to propose an approach where DRSPs themselves decided on the specific number of simultaneous directorships a member of the management body may hold.
34. This would mean in practice that DRSPs would need to provide ESMA, or the NCA where relevant, with the anticipated time commitment required for each position in the management body as part of the submission concerning their functions and

responsibilities. Members or prospective members would have to confirm their ability to dedicate that required time as well as their current responsibilities in other entities.

35. As part of this submission, all DRSPs would need to establish and provide to ESMA, or the NCA where relevant, with the maximum number of directorships a member of its management body may hold in any legal entity at the same time. To determine this number, each DRSP would have to take into account individual circumstances and the scale and complexity of the activities. All of this information such as the size of the management body itself or the scale of the activities of the entity, will already be known to both the entity and the supervisor and will therefore allow for a transparent and flexible approach.
36. All respondents agreed with ESMA's approach to allow DRSPs to establish themselves the limitation to the number of simultaneous directorships that members of the management body of their DRSP can hold.
37. One respondent requested clarification regarding the consideration that DRSPs should give to directorships held by members of the management body of DRSPs within other entities of the same group.
38. In the text of the draft RTS, there was indeed no specific reference to the status of directorships held within the same group. Nevertheless, when Article 6(1)a of these draft RTS mentions the information to be provided to ESMA, or the NCA where relevant, regarding the positions held by members of their management body by DRSPs, it clearly states that DRSPs shall provide their supervisor with information regarding "*directorships held in other financial and non-financial companies (...)*".
39. To confirm, the draft RTS suggests no change to the current practice envisaged in the Guidelines on the management body, namely, counting directorships held within the same group as a single directorship.
40. As this was not explicitly included in the proposed draft RTS, there is merit in including a specific reference to this in paragraph 3 of Article 5 of the draft RTS: "*For the purpose of paragraph 1, all directorships held within the same group as the data services reporting provider submitting the information count as a single directorship.*"
41. Another respondent asked for clarification on the inclusion of the terms "*executive directorships*" and "*nomination committee*" and suggested that some management bodies of DRSPs are not organized as boards with voting rights, that the positions held within them are not treated as executive directorships and that some also do not use nomination committees. While this is certainly true, the only mention of executive directorships in ESMA's proposal is in Article 4, which includes an obligation for DRSPs to have a written policy that clarifies the functions and



responsibilities of the management body of DRSPs. Among them is the need for DRSPs to communicate the anticipated time commitment of each position in the management body, taking into account whether the position is an executive or non-executive one.

42. Eliminating this reference would not change the obligations for those DRSPs without executive positions in their management body. Therefore, the current wording of the article is retained to ensure that all kinds of management bodies are included. Their submission must just take into account the fact that the position is a non-executive one.
43. The same applies for the nomination committee. The only mention in ESMA's draft proposal is in Article 13 (3), where it says: "*shall be adopted by the management body in its supervisory function, involving the nomination committee, where established*". This approach certainly covers management bodies whose members are not nominated by an established nomination committee.
44. The same respondent inquired about the rationale behind asking DRSPs to establish themselves the limitation to the number of simultaneous directorships that members of their DRSP can hold. This provision was introduced in order to guarantee that members of the management body of DRSPs dedicate enough time to their functions and using as a legal basis the mandate of Article 27f of MiFIR as it takes into account "*different roles and functions carried out by them*".
45. ESMA's approach in its proposed draft RTS is based on the principle of proportionality. By allowing DRSPs to determine their own limit of directorships and making reference to the need for those limits to take into account the complexity and range of activities of the company, it takes into consideration that setting a single limit on the number of simultaneous directorships a member of the management body can hold could have some negative impacts for smaller and less complex DRSPs.

3.3 Knowledge, skills and experience

Q4: Do you agree with ESMA's proposal on the obligation for DRSPs to provide a statement guaranteeing their assessment of the individual knowledge, skills and experience of prospective members based on their analysis of CVs as well as the information therein contained?

46. In ESMA's proposal regarding the way to ensure the continuous knowledge, skills and experience of the management body of DRSPs, a statement guaranteeing the assessment by DRSPs was introduced.
47. All respondents agreed with ESMA's approach, which introduces a clear obligation for DRSPs to analyse all the required knowledge, skills and experience from each



individual member of the management body, while at the same time creating a new, unified document to be provided to the supervisor in order to guarantee the fulfilment of the obligation.

Q5: Do you agree with ESMA's proposal regarding the manner of guaranteeing the assessment of the collective knowledge, skills and experience of the management body of DRSPs?

48. ESMA proposed a flexible approach towards the guarantee of the requirement of a proper collective knowledge, skills and experience of the management body that would allow DRSPs to propose their own methodology while guaranteeing the inclusion of certain minimum factors in it.
49. Furthermore, and in order to be consistent with the approach followed in the individual assessment of the members of the management body, DRSPs are required to provide to ESMA, or the NCA where relevant, with a statement clarifying the approach that it followed when assessing the collective knowledge of the management body and the individual's role in the management body. This allows the supervisor to receive a single document that includes the collective assessment of the management body for knowledge, skills, and experience as well as the specific system chosen by the entity and the individuals' role in it.
50. All respondents agreed with this approach, with one of them suggesting that DRSPs should be able to weigh the importance of the different areas to be covered when assessing the collective knowledge, skills and experience of the management body.
51. In response to these suggestions, it should be noted that the ultimate aim of Article 10 is to "ensure that its management body has, collectively, the managerial competence required to perform its role and duties and a sufficient understanding of the firm's activities and the risks that such activities entail according to the scale of the management body". As specified in the draft RTS, the current approach only requires for a DRSP to "consider at least the following areas of knowledge and fields of expertise".
52. This means in practice that although the areas mentioned in the proposed Article 10 (2) must all be covered in the entities' assessment of the collective knowledge of the management body, there is no need for all of them to carry the same weight or to play the same role in the management body's collective knowledge. In practice, whenever a specific area of knowledge counts with extra support from outsourced activities, this can be reflected with a stronger importance for other areas of knowledge in the management body.
53. It is however important to specify that this does not mean that an area of knowledge signalled as strongly covered by outsourced activities can become void of knowledge within the management body itself. The management body will always

need to have such area well covered in order to fulfil its duty to be able to sufficiently understand the firm's activities and the risks that such activities entail.

54. This means that although the areas of knowledge might be weighted differently by different DRSPs in order to correctly reflect their size and the scale of their activities, no DRSP can justify the exclusion of one of the mandatory areas by specifying that this area is covered by outsourced activities of the firm.
55. Given that the current proposal accommodates well the suggestion that DRSPs should be able to weigh the importance of the different areas to be covered when assessing the collective knowledge, skills and experience of the management body, the current draft text of Article 10 is kept unchanged.

Q6: Do you agree with ESMA's view regarding the inclusion of a reassessment obligation of the adequate knowledge, skills and experience of the management body at a collective level?

56. In order to guarantee that the management body of DRSPs is covered by sufficient knowledge, skills and experience, ESMA specified in its proposal several instances that would trigger a reassessment of the original analysis performed and submitted to the supervisor in the mandatory statement.
57. The instances that would trigger a reassessment are the following: "When appointing new members of the management body; when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed to a different position within the management body; when appointed or re-appointed members cease to be members of the management body; when there is a material change to the company's or company's group business model, risk appetite, strategy or structure; in any event that can otherwise materially affect the collective suitability of the management body".
58. All respondents agreed with the inclusion of this reassessment obligation at the collective level as well as with the proposed situations that would trigger such a reassessment. One respondent specified that such a reassessment would only be relevant when there are changes of the management body in order to guarantee the body itself is still meeting the collective knowledge, skills and experience criteria.
59. While changes in the management body itself represent the most obvious and common reason that would trigger and necessitate such a reassessment, including only such events would not be exhaustive. In ESMA's proposal, and following the experience with the supervision of TRs, events such as the change of business model, the risk appetite of the company or the strategy of the firm can be equally

important events that can merit a reassessment of the knowledge, skills and experience needed at the management level.

60. Therefore, the current approach in Article 10 (3) and (4) is maintained without amendments. It is a comprehensive provision that covers all relevant circumstances that would trigger the reassessment of the collective knowledge, skills and experience of the management body. Eliminating some of the circumstances in it would not have a meaningful impact in terms of burden for the entities, whereas its deletion could entail a risk for the firms' appropriate management of its risks and activities and the fulfilment of their regulatory obligations.

3.4 Independence of mind

Q7: Do you agree with ESMA's inclusion of an up-to-date inventory of existing material conflicts of interest that DRSPs are obliged to provide?

61. In order to guarantee the required independence of mind of members of the management body of DRSPs, ESMA proposed the introduction of an up-to-date inventory of conflicts of interest for DRSPs.

62. This requirement, based on the experience with the supervision of TRs, would allow DRSPs to register and address ongoing conflicts of interest of members of their management body and keep a transparent approach of potential issues that would hamper their management body's independence when taking decisions.

63. All respondents agreed with the inclusion of this updated inventory of conflicts of interest as a requirement for DRSPs to provide to their supervisor, as well as their responsibility to keep it updated. ESMA's proposal is therefore to keep in the draft RTS text the inclusion of said inventory.

64. One respondent noted that while agreeing with the inclusion of such an inventory, since DRSPs are in many cases part of a larger financial group rather than standalone entities, many DRSPs will notify conflicts of some of their members with other activities of the same group.

65. This aspect has already been recognised in the current draft RTS, as can be seen in the following Article 11(5): "*When a data reporting services provider is part of a group the inventory shall include any material conflicts of interest arising from other undertakings within the group and how these conflicts are being managed*".

66. The current text of this Article does not prevent the members from keeping such positions, as long as the conflicts of interest are notified and dealt with, and always



with respect to the rest of the obligations of members of the management body notably with regards to their sufficient time commitment.

67. One respondent notified that the inclusion of references to voting rights might not be needed when discussing the conflicts of interest policy of the management body of a DRSP as it is not organised in the same way as a board. ESMA believes that these provisions might have been misread, as all references to voting rights in the Articles covering the conflict of interest policy are making reference to the voting rights in other entities distinct from the management body the members are serving in. Specifically, voting rights in other entities where they themselves might be serving or deployed in any capacity.
68. Furthermore, the proposed text of Article 11 follows the same approach as the text of the current Guidelines on the management body of DRSPs and is therefore the current accepted practice for the industry. Therefore, the current wording of the draft RTS is kept unchanged in order to guarantee it covers all forms of potential conflicts of interest between conflicting management positions.

3.5 Induction and training

Q8: Do you agree that the above requirements regarding induction and training of members of the management body for DRSPs are an appropriate and proportional manner to guarantee the continuous knowledge, skills and experience of the management body as a whole? Please elaborate on the reasons for your response.

69. In ESMA's draft RTS proposal, the main novelty introduced with regards to the knowledge, skills and experience of the management body of DRSPs, was the introduction of a mandatory induction and training policy.
70. This policy is introduced to guarantee the continuous fulfilment by members of the management body of their obligation to always have sufficient knowledge, skills and experience, as derived from the mandate for these RTS.
71. In practice this meant the submission to ESMA, or the NCA where relevant, of such an induction and training policy for the guarantee of a continuous suitability of the management body as a whole.
72. All respondents agreed with ESMA's approach and the proposed requirements regarding induction and training of the management body of DRSPs. One respondent however, considered that the obligation to record such requirements into a formal policy could potentially be onerous and administratively burdensome. This respondent suggested an approach based on alternative documentation such as "procedures and process documents".

73. When introducing this new requirement, the fact that it could create a burden for certain DRSPs with less complex management bodies was weighted with the importance of guaranteeing a continuous fulfilment of the obligations introduced by the legal mandate of these RTS.
74. Ultimately, ESMA decided to propose the introduction of a paragraph within Article 13 that specifies the importance of proportionality with regards to the introduction and submission of the induction and training policy for the management body of DRSPs.
75. Considering the respondent's suggestion to substitute a formal policy submitted to the supervisor containing clear details and objectives for the induction and training of the members of their management body with alternative documentation, such as "procedures and process documents", it has to be said that the approach of the proposed RTS is the preferred one for the following reasons: first, it constitutes a more comprehensive and clear responsibility for DRSPs while maintaining flexibility regarding its scope and magnitude; second, it is consistent with the current regulatory approach towards other supervised entities; and third the approach suggested by the respondent would be possible under the proposed Article 13 of these RTS as "procedures and process documents" constitute the basis of an induction and training policy.
76. The current proposed approach of the draft RTS guarantees the fulfilment of the obligation by all DRSPs while at the same time being flexible when considering every firm's submission of such a policy to their supervisor. Therefore, the concern raised by the respondent has already been addressed by ESMA's proposal and it is suggested to proceed without any changes to the wording of Article 13 in these draft RTS.

3.6 Diversity

Q9: Do you agree with ESMA's view that diversity constitutes a necessary factor to achieve the collective knowledge of the management body of DRSPs that ESMA needs to assess?

77. In the proposed draft RTS, diversity was included as a necessary factor to be considered by DRSPs when analysing the collective knowledge of the management body of their DRSP. The aim was to include diversity and recognize the importance of involving people from different professional and personal backgrounds in order to achieve a management body that truly represented diverse points of view from its members.



78. All respondents agreed with ESMA's proposed approach to include diversity as a necessary factor to achieve the collective knowledge of the management body of DRSPs, with respondents noting their satisfaction with the explicit reference to diversity within the collective assessment of the management body's suitability. Therefore, the proposal is to retain the proposed Article in these draft RTS.

3.7 Record-keeping

Q10: Do you agree that DRSPs should ensure continuous availability to the information needed for the assessment of the suitability of their management body by keeping it in a durable medium and making it available to ESMA or the NCA where relevant?

79. Regarding record-keeping in ESMA's proposal for the draft RTS, the approach was to include a clause after each provision requiring DRSPs to submit a piece of information to ESMA, or the NCA where relevant, mandating DRSPs to make all information available on a durable medium.

80. The objective was to guarantee the availability in the medium to long term of all relevant information, while not imposing to DRSPs the more burdensome option of developing a stand-alone record-keeping policy to be submitted to ESMA, or the NCA where relevant.

81. All respondents agreed with ESMA's approach of ensuring the continuous availability of the information needed for the assessment of the suitability of their management body by keeping it in a durable medium that is made available to ESMA, or the NCA where relevant, upon request. Therefore, the respective proposed provisions of the draft RTS regarding record-keeping should be kept unchanged.

4 Annexes

4.1 Annex I

Legislative mandate to develop technical standards

Article 27f of MiFIR

Requirements for the management body of a data reporting services provider

1. *The management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.*

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM pursuant to Article 27d and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirements laid down in the first subparagraph.

2. *A data reporting services provider shall notify to ESMA, or the national competent authority where relevant, the names of all members of its management body and any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.*



3. *The management body of a data reporting services provider shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.*

4. *ESMA, or the national competent authority where relevant, shall refuse authorisation if it is not satisfied that the person or persons who effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management body of the data reporting services provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.*

5. ***ESMA shall develop draft regulatory technical standards by 1 January 2021 for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.***

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.



4.2 Annex II

Advice of the Securities and Markets Stakeholder Group

In accordance with Article 10(1) and Article 37(1) of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.



4.3 Annex III

Cost-benefit analysis

Article 10 of the ESMA Regulation requires ESMA, to analyse the potential costs and benefits relating to the proposed RTS unless such analyses are highly disproportionate in relation to the scope and impact of the draft RTS concerned or in relation to the particular urgency of the matter.

Article 27f (1) of MiFIR establishes requirements with respect to the management body of DRSPs, stating that the management body “*shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties*”; and that it “*shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary*”.

Article 27f (5) of MiFIR determines that ESMA shall develop RTS for the assessment of the suitability of the members of the management body of DRSPs.

Benefits: The RTS is aimed at transforming and updating the requirements contained in the Guidelines on the management body. In that sense, they should create clear obligations for DRSPs, as well as members and potential members of the management body of DRSPs about the requirements that should be met according to Article 27f of MiFIR.

Compliance costs

- One-off
- Ongoing

Most of the concepts of these RTS are already known to the industry under the Guidelines on the management body, and the vast majority of national regulatory frameworks. They are also the common practice of the market.

Therefore, the vast majority of the provisions provided for in these RTS are in line with already established practice of compliance.

The novelties for DRSPs in these RTS are the notions of “diversity” and the “devotion of resources for the induction and training of the members of the management body”, as well as the limitations on the number of directorships. However, it must be noted that in respect of the principle of proportionality, the limitation of the number of directorships is left for DRSPs to determine themselves, taking into account their complexity, and the scale of their activities and of their management body.

In the case of the criteria of “diversity” and the “devotion of resources for the induction and training of the members of the management body”, it must be added that in the Guidelines on



the management body there is already a specific mention to the fact that these provisions should apply to larger, more complex entities. Moreover, in the case of diversity, there is even an explicit mention to DRSPs as they are assumed to be smaller. These two explicit mentions to size, show that the purpose of excluding DRSPs, and in the case of “diversity” explicitly due to the potentially smaller size of their management body, is based exclusively on their expected size. Furthermore, the outcome of the consultation clearly shows these new requirements for DRSPs are not a cause for concern nor an excessive burden for DRSPs, as ESMA has clearly taken into account the principle of proportionality when developing these RTS.

Therefore, these requirements for the management body of DRSPs will not have any negative impact or excessive cost for an industry that currently already follows most of these practices.

4.4 Annex IV

Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../...



of [...]

supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the assessment of the suitability of the members of the management body of data reporting services providers

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ⁽¹⁰⁾, and in particular the second subparagraph of Article 27f(5) thereof,

Whereas:

- (1) Rules should be laid down for the assessment of the suitability of the members of the management body of data reporting services providers.
- (2) All members of the management body of a data reporting services provider should be persons who are of sufficiently good repute and possess sufficient knowledge,

¹⁰ OJ L 173 12.6.2014, p. 84.

skills and experience, as those persons play a key role in ensuring that the data reporting services provider meets its regulatory obligations and contribute to its business strategy.

- (3) The good reputation and sufficient knowledge, skills and experience of the management body should be guaranteed at all times. For that reason, the data reporting services provider should take into account the different events that might affect the ability of the members of its management body to keep their good reputation, sufficient knowledge or skills in line with the needs of the management body as a whole. The data reporting services provider should adopt a proportional approach to guarantee the induction and training of the members of its management body. It should also guarantee a comprehensive reassessment of the suitability of the members of its management body that takes into account all major events that might affect such suitability.
- (4) Given the interconnectedness of the activities of a data reporting services provider, conflicts of interest may arise between the members of the management body of data reporting services providers and the users of their services. In particular, conflicts may arise where the data reporting services provider is engaged in other activities such as acting as a market operator, investment firm or trade repository. In order to address this, the data reporting services provider should have and make available a conflict of interest policy that guarantees a comprehensive approach to identifying, preventing and addressing existing and potential conflicts of interest, including a thorough analysis of any new member of its management body. In order to guarantee the assessment of the suitability of the members regarding the potential and actual conflicts of interest, the data reporting services provider should keep an updated inventory of relevant conflicts of interest and how they are being managed.
- (5) The members of the management body should dedicate enough time and have enough knowledge to oversee decision-making relating to the activities of the data reporting services provider. Therefore, provisions should be established guaranteeing an appropriate knowledge and accountability of the members of the management body comprising as well the outsourcing of activities, in particular of critical functions.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹¹⁾,

¹¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and



HAS ADOPTED THIS REGULATION:

Article 1

Definition

For the purpose of this Regulation “data reporting services provider”, or “DRSP”, means an approved publication arrangement or an approved reporting mechanism as defined in Article 2(1)(34) and Article 2(1)(36) of Regulation (EU) No 600/2014 and persons referred to in Article 27b(2) of that Regulation providing the services of an approved publication arrangement or an approved reporting mechanism.

Article 2

Sufficiently good repute

1. A data reporting services provider shall provide to ESMA or the national competent authority, where relevant, and require from each member of its management body to provide the following up-to-date information:
 - a. details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate;

Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- b. a self-declaration of good repute where each member declares whether he or she:
 - i. has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;
 - ii. has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
 - iii. has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;
 - iv. has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;
 - v. has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person was employed by the undertaking or within a year of the person ceasing to be employed by the undertaking;
 - vi. has been fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body; or
 - vii. has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice.
2. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, the information referred to in this Article upon request.

Reassessment of suitability

1. A data reporting services provider shall ensure that the members of the management body immediately report to the data reporting services provider any change in the information provided in accordance with point (b) of Article 2(1) for a reassessment of their suitability.
2. A data reporting services provider shall reassess the suitability of each of the members of the management body in any of the following cases:
 - a. where there are concerns regarding his or her suitability;
 - b. in the event of a material impact on his or her reputation;
 - c. as part of the review of the internal governance arrangements by the management body;
 - d. in any event that can otherwise materially affect his or her suitability.
3. A data reporting services provider shall provide ESMA or the national competent authority, where relevant, with all information mentioned in this Article for a reassessment of the suitability of the members of its management body.

Article 4

Functions and responsibilities

1. A data reporting services provider shall have a written policy that contains the following items:
 - a. details of the functions and responsibilities of the management body;
 - b. a comprehensive job description for each position in the management body; and
 - c. the anticipated time commitment required for each position in the management body. The anticipated time commitment shall be adapted to the functions and responsibilities of the position taking into account in particular whether it refers to an executive or a non-executive position.
2. A data reporting services provider shall ensure that when a person is selected to become a member of its management body, the anticipated time commitment for the position is recorded in writing.

3. A data reporting services provider shall require the prospective member to confirm in writing that he or she can devote the anticipated time commitment to the role, including the possibility to devote additional time when the data reporting services provider is undergoing a period of particularly increased activity. The effective appointment to the position shall not take place without such a written confirmation by the prospective member.

3. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, the information referred to in this Article upon request.

Article 5

Number of directorships

1. A data reporting services provider shall establish and provide to ESMA, or the national competent authority where relevant, the maximum number of directorships that a member of its management body can hold, in any legal entity, at the same time, taking into account its individual circumstances and the nature, scale and complexity of its activities.

2. A data reporting services provider shall ensure that each member of its management body confirms in writing, that they comply with the limitations on the number of directorships that a member of the management body can hold, in any legal entity, at the same time.

3. For the purpose of paragraph 1, all directorships held within the same group as the data services reporting provider submitting the information count as a single directorship.

Article 6

Information to be provided on time commitments

1. A data reporting services provider shall provide ESMA, or the national competent authority where relevant, and ensure that prospective members

of its management body provide the data reporting services provider with information regarding:

- a. directorships held in other financial and non-financial companies, including when acting on behalf of a legal person or as an alternate appointed by a member of the management body to attend meetings;
 - b. directorships held in organizations which do not pursue predominantly commercial objectives;
 - c. other functions and professional activities within and outside the financial sector relevant in terms of time commitment; and
 - d. the nature of his or her responsibilities with respect to the directorships, functions and professional activities under points (a) to (c).
2. A data reporting services provider shall ensure that the members of its management body notify the data reporting services provider of any material change in the information provided in accordance with paragraph 1.
3. A data reporting services provider shall reassess the ability of a member of its management body in respect of the anticipated time commitment when the member notifies the data reporting services provider of any changes in his or her external professional functions or whenever the data reporting services provider becomes otherwise aware of such a change.
4. A data reporting services provider shall update and communicate to ESMA, or the national competent authority where relevant, any changes to the information referred to in paragraph 1.

Article 7

Attendance

The management body of a data reporting services provider shall take into account the cumulative time commitment shown by its members, using at least the attendance to the management body's meetings as one of the indicators of time commitment.

Article 8

Individual knowledge, skills and experience

1. A data reporting services provider shall assess the requisite experience and knowledge by ensuring that all prospective members of its management body provide the data reporting services provider with a curriculum vitae containing in particular:
 - a. details of education and professional experience including professional experience, academic qualifications and other relevant training;
 - b. the name and nature of all organisations for which the individual has worked and the nature and duration of the functions performed in those organisations, in particular highlighting any activities within the scope of the position sought in the data reporting services provider.
2. As regards the education, consideration shall be given by the data reporting services provider to the level and profile of the education and whether it relates to financial services or any other relevant area of knowledge for the business of the data reporting services provider. For the purpose of assessing the education, a data reporting services provider shall take into consideration both the theoretical knowledge and skills attained through education and training as well as the practical experience gained in previous occupations by the prospective member of the management body.
3. As regards the practical experience, consideration shall be given by the data reporting services provider to the practical and professional experience gained from a managerial position over a sufficiently long period. Short term or temporary positions shall be considered in the assessment. Nevertheless, they shall not be considered per se sufficient to support adequate expertise.
4. A data reporting services providers shall ensure that each prospective member of the management body has an up to date understanding of the activities of the data reporting services provider and related risks that is at a level commensurate with their responsibilities, its governance arrangements, the prospective position and responsibilities and, where applicable, the group's structure. This shall include an appropriate understanding of the areas for which a member of the management body is not directly responsible but is collectively accountable together with the other members of the management body.

5. A data reporting services provider shall provide ESMA, or the national competent authority where relevant, whenever there is a new appointment of a member of the management body, with a statement, including the curriculum vitae of the individual, on whether or not the individual has been assessed as having the requisite experience as enumerated in this article and, if not, details of the training plan imposed, including the content, the provider and the date by which the training plan will be completed. This statement shall include detailed information on the knowledge and experience in IT management, compliance, financial data and pricing and fee policies.
6. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, upon request the information referred to in this Article.

Article 9

Operational separation and outsourcing

A data reporting services provider shall make sure that the statement referred to in Article 8(5) includes a confirmation that each member of its management body has been assessed as having the expertise and knowledge to supervise, monitor and decide on the operational separation in terms of resources, systems and procedures, between the data reporting services provider and other business lines, irrespective of whether that separate business line is run by the data reporting services provider, a company belonging to its holding company, or any other company within which it has an agreement.

Article 10

Collective knowledge, skills and experience

1. A data reporting services provider shall ensure that its management body has, collectively, the managerial competence required to perform its role and duties and a sufficient understanding of the firm's activities and the risks that such activities entail according to the scale of the management body.
2. When assessing the suitability of members of its management body with respect to the requirement for the management body to possess adequate

collective knowledge, skills and experience, a data reporting services provider shall take into account the educational and professional background, gender, age and geographical provenance of the members with the aim of achieving a variety of views and experiences and consider at least the following areas of knowledge and fields of expertise:

- a. each of the material activities of the data reporting services provider, including outsourced activities;
 - b. financial accounting and reporting;
 - c. strategic planning;
 - d. risk management;
 - e. compliance and internal audit;
 - f. information technology and security;
 - g. local, regional and global markets where applicable;
 - h. the regulatory environment; and,
 - i. the management of (inter)national groups and risks related to group structures where applicable.
3. A data reporting services provider shall assess or re-assess the collective suitability of its management body when material changes to the composition of the management body occur, in particular in any of the following cases:
- a. when appointing new members of the management body;
 - b. when re-appointing members of the management body, if the requirements of the position have changed or if the members are appointed to a different position within the management body;
 - c. when appointed or re-appointed members cease to be members of the management body.
 - d. when there is a material change to the company's or company's group business model, risk appetite, strategy or structure.
 - e. in any event that can otherwise materially affect the collective suitability of the management body.
4. Where a re-assessment of the collective suitability is performed, a data reporting services provider shall focus the assessment on the relevant changes in the data reporting services provider's or its group's business activities, strategies and risk profile and in the distribution of duties within the management body and their effect on the required collective knowledge, skills and experience of the management body.

5. A data reporting services provider shall provide ESMA, or the national competent authority where relevant, with a statement regarding its overall assessment or reassessment of the collective suitability of its management body as a whole, including a statement on how each individual is to be situated in the overall suitability of the management body. The assessment or reassessment shall be done following any method chosen by the institution or required by the relevant competent authority that includes at least the requirements mentioned in the first paragraph of this article. The assessment or reassessment shall include the identification of any gaps or weaknesses and the measures imposed to address these.

6. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, the information referred to in this Article upon request.

Article 11

Conflict of interest policy

1. The management body of a data reporting services provider shall have a conflict of interest policy and a compliance process for implementing the policy. The policy shall include, with respect to each member of the management body, at least:
 - a. the duty to avoid to the extent possible activities that could create conflicts of interest;
 - b. examples of where conflicts of interests can arise when serving as member of the management body;
 - c. a rigorous review and approval process to follow before the engagement in certain activities so as to ensure that such activity will not create a conflict of interest;
 - d. the duty to promptly disclose any matter that may result, or has already resulted, in a conflict of interest, having particular regard to the circumstances described in this article;
 - e. the duty to abstain from voting on any matter where the member of the management body may have a conflict of interest or where his or her objectivity or ability to properly fulfil the duties may be otherwise compromised;
 - f. adequate procedures for transactions with related parties so that they are made with respect to the conflict of interest policy;

1. A data reporting services provider shall ensure that members or prospective members of its management body identify and report to the management body any existing or potential conflicts of interest that may impede their ability to perform their duties independently and objectively and subject them to undue influence, including:
 - a. any personal, professional or economic relationships with other persons, including shareholders of the data reporting services provider concerned or of a competing data reporting services provider;
 - b. any past or present positions held;
 - c. personal, professional or economic relationships with other members of the management body or senior management or where the data reporting services provider is part of a group, with other entities within the group;
 - d. other economic interests, including loans to a company belonging to the member or prospective member of the management body; or
 - e. other interests, including family interest, that may create actual conflicts of interest.

2. A data reporting services provider shall ensure that the identification of circumstances which may give rise to conflicts of interests described in the previous paragraph shall at least cover whether the member or prospective member:
 - a. is or has been a shareholder whose participation reaches or exceeds 5% of voting rights of a data reporting services provider or an employee of, or otherwise associated directly with, a shareholder whose participation reaches or exceeds 5% of voting rights of a data reporting services provider;
 - b. is employed, or has previously been employed in the previous 18 months in an executive capacity by a data reporting services provider or another entity in the group of a data reporting services provider;
 - c. is or has been, in the previous 18 months, a professional adviser or a consultant to a data reporting services provider or another entity in the group of a data reporting services provider or an employee associated with the service provided;
 - d. is or has been, in the previous 18 months, a shareholder whose participation reaches or exceeds 5% of voting rights or a member of the

- management body of a company listed on a market which is part of the group of the data reporting services provider;
- e. is or has been a supplier or customer of a data reporting services provider or another entity of the group of the data reporting services provider or an employee of or otherwise associated directly or indirectly with a material supplier or customer; and
 - f. has or used to have any other contractual relationship with a data reporting services provider or another entity in the group of a data reporting services provider other than as a member of the management body.
3. The references in the preceding paragraph to “a data reporting services provider” shall be understood as both the data reporting services provider to the management body of which the person is a member or prospective member as well as another data reporting services provider.
 4. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, the information referred to in this Article upon request.

Article 13

Requirements on the induction and training policies of data reporting services providers

1. A data reporting services provider shall provide ESMA, or the national competent authority where relevant, with an induction and training policy to ensure that each member of its management body is and remains suitable, for his or her position. The policy shall facilitate the maintenance of members' understanding of the activities, structure, business model, risk profile, regulatory environment and governance arrangements of the data reporting services provider and of the role of the members of its management body.
2. A data reporting services provider shall also provide for relevant general and, as appropriate, individually tailored training programs to ensure that all members are kept up to date. The training policy shall also promote the awareness regarding diversity in the management body.

3. The policy referred to in paragraph 1 shall be proportionate to the size of the entity and shall be adopted by the management body in its supervisory function, involving the nomination committee, where established.
4. The policy shall set out:
 - a. the induction and training objectives for the management body separately for the management function and the supervisory function and, where appropriate, specific positions according to their specific responsibilities and involvement in committees;
 - b. the responsibilities for the development of a detailed training program;
 - c. the financial and human resources available in order to ensure that induction and training can be provided in line with the policy; and
 - d. a clear process for any member of the management body to request induction or training.
5. The policy and training programs shall be kept up to date and shall take into account market developments as well as changes in governance, strategy, products covered, or the applicable legislation.
6. The data reporting services provider shall use evaluation processes to review the effectiveness of the training provided.
7. A data reporting services provider shall record and maintain in a durable medium and make available to ESMA, or the national competent authority where relevant, the information referred to in this Article upon request.

Article 14

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



Done at Brussels, [date]

For the Commission

The President

[For the Commission]

On behalf of the President

[Position]