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ESMA
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9/27/2017

Consultation on Guidelines on certain aspects of the MiFID II suitability requirements

ESMA35-43-738

Dear Sirs,

the Verband für Finanzdienstleistungsinstitute e.V. (Association for Financial Services Institutions) is a German professional association representing small and intermediate sized investment firms. Their activities are predominantly services in the categories 'Reception and transmission of orders in relation to one or more financial instruments', 'Portfolio management' and 'Investment advice' of Annex I Section A of MIFID (DIRECTIVE 2004/39/EC).

Our comments are restricted to question No. 12:

Q12: Do you have any further comment or input on the draft guidelines?

In general, we think that the draft guidelines present a reasonable approach to interpret the elements of the suitability screening process.

There is, however, one aspect which is completely neglected by the draft guidelines under consultation.

On page 35 of the consultation paper the following comment is made concerning the efficiency of the suitability guidelines.

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We quote

“compliance costs and indirect costs for firms largely compensated **by the enhancement of the quality of the services provided to clients**, in particular from the improved reliability of the information provided to and collected from investor (which should decrease misselling cases restoring the consumers’ trust in financial markets and increasing their participation to trading in financial instruments)”

(bold fonts added by us)

The enhancement of quality of the services is a key element of MIFID II to justify the admissibility of inducements for advisory services which are rendered to the clients not on an independent basis.

Art. 24 (9) states

„investment firms are regarded as not fulfilling their obligations under Article 23 or under paragraph 1 of this Article where they pay or are paid with regard to any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client other than where the payment or benefit:

(a) is **designed to enhance the quality of the relevant service to the client;**

It is certainly no accident that the authors of the consultation paper have chosen the same language as is contained in Art. 24 (9) of the directive in judging the efficiency of the guidelines.

We think it appropriate that ESMA reflects in the guidelines also the fact that any expenses of advisory firms to implement these guidelines are expenses which qualify to justify the acceptance of third party inducements in an appropriate amount provided the other conditions also set by the directive are met.

Kind regards,



Verband der Finanzdienstleistungsinstitute e.V.
Gabriele Cloß
Rechtsanwältin