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To: European Securities and Markets Authority
CS 60747, 103 rue de Grenelle
75345 Paris Cedex 07, France

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Re: Public consultation MiFID II suitability guideline

Dear Sirs

Please find enclosed our comments on the Consultation on Guidelines on certain aspects of the MiFID II suitability requirements (hereinafter referred to as the “**Guidelines**”).

Sincerely yours,

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Annex 1. Comments.

ANNEX 1

Introduction

Without prejudice to the other provisions of Guidelines, the requirements for online and “robo-advice” investment services and products shall be pulled out into a separate chapter in the Guidelines and amended respectively as following.

The opinion is made with the reasoning that there are certain consistent differences between the provision of online and offline investment services, such as financial advice and portfolio management; there must be separate chapter(s) in the Guidelines on online and “robo-advice” investment services matters, given the expansive growth of respective demand and tendencies in info-technology solutions, also taking into account differences caused by the absence of direct contact as opposed to the offline, i.e. face-to-face communication. Usually in most of the cases online financial services provisions fail to take into account all the situations related to the behavioral finance, such as unexpected or extraordinary situations, crises as well as other life situations (for instance, when an inexperienced person comes into inheritance and visits inter alia “robo-advice” platform to manage the receivables or cash).

Our response is considering other distinctive features between the processes of providing offline and online investment services: for instance, risk management aspect, i.e. online operator shall include (inter alia) technological guarantees, testing and others. It is important to notice also that not all types of investment services and products are suitable for online provision or in a “robo-advice” manner and some might be explicitly excluded from the selection of online investment services.

Inter alia, there shall be special aspects of client profiling at place, for instance, when a client is providing contradictory or uncertain data. In such cases the online or/and “robo-advice” operating system shall have instruments and algorithms which enable to determine such behavior, the service provider systems shall be able to adjust or coordinate the information thereof.

The risks arising from online investment services and products are wider and do not constitute the same risks as those arising from offline service provision. There are new risks constantly occurring in the online investment services industry. As regard to that, a remarkably fast pace has been observed in the growth of Fintech, where the lack of regulation can cause negative impact on investor’s protection. Such new risks are arising from cross-border unlicensed activities, incl. Fintech, failure to understand the product and services by investors, programming errors in the algorithms, etc. Additional investor protection measures which are ensured by more explicit and specific regulation in the Guidelines are needed and this issue shall be addressed more profoundly and specifically.

Thus, there is a reasonable necessity to establish a clear and explicit guideline chapter for offline, online, “robo-advice”, etc. provided services. We also believe that in the nearest future an entirely new guideline for only „robo-advice“ products will be needed.

Considering the above, we are of opinion that the Guidelines should be amended as following.

Amendment proposal

(A)

- Section I. SCOPE. Subsection 2

These guidelines apply in relation to the provision of the following investment services listed in Section A of Annex I of Directive 2014/65/EU21 (MiFID II):

(a) investment advice;

(b) portfolio management.

Subsection 2 shall be amended by point (c) with the following wording:

(c) „robo-advice“ investment advice and portfolio management service through means of electronic communication.

Nevertheless there is a respective definition in Section II. DEFINITIONS of the Guidelines; we are of the opinion that the reference to “robo-advice” in Section I. SCOPE (the scope of implementation) shall be made instead.

(B)

- Guideline 1 - Information to clients about the purpose of suitability assessment

We propose to amend Guideline 1 (Sections 34-40) as following:

...the companies cannot program the algorithms to forward the clients to particular investment services for the companies using the robo-advice solutions or their connected entities, which are paid with the higher fees of commissions.

- Guideline 1. Section 39

The text of Section 39 should be amended as following:

The information on rebalancing shall be presented to the clients in the explicit and clear wording including, the frequency of rebalancing, any additional costs that may be incurred therefore and explain risks related to such automatic rebalancing e.g. when such rebalancing is not related to any market conditions.

(C)

- General comment

The text of Guideline 1 shall be amended with the description of how the service or product provider would inform the client on “major market event”. Definition of such event shall be specified in the Guidelines definitions.