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## Amundi's reply to Consultation Paper on ESMA's Guidelines for MiFID II suitability requirements

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### Executive summary:

Amundi welcomes ESMA's consultation and the possibility of sharing an opinion on the topics which it addresses. We do share the approach of ESMA and the main conclusion and driving provided in this consultation, in particular for what is of special provisions with regards to robo-advice and digital distribution. In fact, these tools may provide substantial benefits to clients but only under the condition of taking their limits on board and coping with such limits.

These guidelines provide a series of provisions which make sense for the retail market but which have little connection with other markets and, in particular with institutional investors which represent a very significant part of activities in the field of asset management. Therefore we consider that ESMA should specify that these guidelines only apply to the retail market.

Nevertheless, Amundi has some concerns on the following points which could be quite detrimental at a time when savings need to be invested in financial markets:

- The requirement of possessing information about investments of clients with other firms in point 41 which could cause real commercial problems.
- The check of knowledge and experience of the client in case of portfolio management (point 81) which contradict the very essence of discretionary portfolio management.
- All points in reference to guideline 10 and the valuation of switching which are not appropriate nor workable. In this respect Amundi would appreciate ESMA to set a clear distinction between financial advice and portfolio management.

Last but not least, as we say in French, "*trop d'information tue l'information*" and ESMA should take care not to add new information requirements to those –already quite heavy – which have been included in MiFID II.

**Q1: Do you agree with the suggested approach on the information to be provided on the suitability assessment and specifically with the new supporting guidelines on robo-advice? Please also state the reasons for your answer.**

Yes Amundi agrees with ESMA's approach. In particular we agree with § 21 stating that client should understand to which extent algorithms are used, the degree of human involvement and whether the client can ask for human interaction, and how. In addition, we do believe that a client relationship without any human connection cannot be sustainable in the long term. Nevertheless, information required in the third § of point 21 could be difficult to provide in few words and we wonder whether an extensive explanation of how the firm uses information from client to elaborate an investment advice will provide any value.

In addition, we do believe that the average investor is not in a position to evaluate the efficiency of any algorithm. Beyond a minimum of information to be provided to the investor, **we consider that the main**

**job should be the responsibility of NCAs to monitor the quality and soundness of robo-advice models in order to protect retail investors.**

The writing of the general guideline 1 could be misinterpreted leading to a legal risk for investment firms when speaking of “the firm’s responsibility to conduct such assessment”. We understand that this guideline is a kind of argument in favor of advisors when facing clients who are not keen to answering questions. In order to avoid any unexpected legal effect we would urge ESMA to speak of “the firm’s obligation to conduct such assessment”.

**Q2: Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.**

Yes we do agree and we think that ESMA has covered all necessary topics on this point. We would just ask ESMA to clarify that of course these guidelines only refer to suitability for retail clients and not for professionals. The guidelines do not reflect the caveat for professional clients and for certain services under Article 54(3) of the MiFID II Delegated Regulation.

**Q3: Do you believe that further guidance is needed to clarify how firms should assess clients’ ability to bear losses?**

It would probably be counter-productive to introduce further guidance because it would suppose entering into quantitative consideration which would hardly be suitable across the EU.

**Q4: Do you agree with how the guideline on the topic of ‘reliability of client information’ has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.**

For the reasons given above (Q 1), we agree with the updated guidelines for the sake of robo-advice models. Of course, requirement should not result in an obligation of individualizing questions for each client which is impossible in the context of automated advice.

**This being said, Amundi does not quite agree with the provision of point 34:**

*“For complex products ESMA expects firms to carry out a robust assessment amongst others of the client’s knowledge and experience, including, for example, his ability to understand the mechanisms which make the investment product “complex”*

As repeatedly stated up to now, it is necessary for the client to understand all what may have an impact on the risk or on the return of the product (i.e. structured funds) but it is not necessary for him to understand how the product is structured. **Speaking of ‘mechanisms which make the investment product ‘complex’ is ambiguous and irrelevant in respect with what is really necessary for the client to understand.** The guidelines should specify that mechanisms referred to are those which determine the return for clients, based on a formula.

**Another questionable requirement is the one in point 41:** "Firms should also encourage clients to disclose their financial investments with other firms in detail, if possible on an instrument-by-instrument basis".

Usually, when an investor chooses to have relations with different investment firms, he does not share what he has done with competitors as far as he wants to remain completely free of his choices.

**Therefore it is only possible to require the advisor to assess whether the recommendation is relevant based on the information provided by the customer.**

**Q5: Do you agree with the suggested approach on the topic of ‘updating client information’? Please also state the reasons for your answer.**

Yes, updating information regularly makes sense especially since it is easier to achieve it ‘on-line’ than through a visit or appointment with the client. Of course this updating should only be required as far as the client agrees to answer without obligation of relaunching.

**Q6: Do you agree with the suggested approach to conduct the suitability assessment for a group of clients, especially where no legal representative is foreseen under applicable national laws? Please also state the reasons for your answer.**

ESMA introduces a new requirement for an investment firm to inform clients *ex ante* about its policy. Article 54(6) of the MiFID II Delegated Regulation requires an investment firm to establish and implement a policy and to record this policy, **but there is no requirement to disclose such policy to clients.** As we use to say : “*Trop d’information tue l’information*” and this would not be an improvement in the information provided to retail clients.

**Q7: Do you agree with the suggested approach on to the arrangements necessary to understand investment products for the purposes of suitability assessment? Please also state the reasons for your answer.**

**Q8: Do you agree with the additional guidance provided with regard to the arrangements necessary to ensure the suitability of an investment? Please also state the reasons for your answer.**

The available information mentioned in point 75 should be limited to the only information client is willing to disclose to the investment firm. It should be clear that investment firms have no obligation of investigation beyond what the client have accepted to provide.

Amundi disagrees with the statement which is made in point 78 :

*“In this regard, the tools should be designed so that they take account of all the relevant specificities of each client or investment product. For example, tools that classify clients or investment products broadly would not be fit for purpose.”*

In fact, when using algorithm and making automatic advice, it is not possible to take into account all specificities of each client. In most cases such a provision would be maximalist and counter-performing, in particular for vanilla products or funds. As we say in French: “*Le mieux est l’ennemi du bien*” **and this provision, if applied without proportionality, would result in a de facto ban of robo-advice.** What could make sense would be to have mechanism allowing to identify specificities which contradict the investment in certain products and which would require a human intervention.

Amundi does not agree either with point 81 which contradicts ESMA's guidelines for target marketing in the context of portfolio management. One of the purposes of portfolio management is to provide access to products that an isolated retail client cannot afford and for which he has not the required knowledge in order to assess the opportunity of investing in, at a given time. **Requiring knowledge and experience from the client for each product placed in the context of discretionary mandate would take away any interest in portfolio management.**

In paragraph 84, ESMA makes a focus on concentration risk which has never been addressed neither in level 1, nor in level 2. This type of risk is already taken into account in UCITS rules and diversification is one of the key principles of UCITS IV. Diversification is also a basic aspect of portfolio management. Introducing specific rules in this field would probably be detrimental. In any case, these rules have not their place in these guidelines.

**Q9: Do you agree with the suggested approach for ensuring that firms assess, while taking into account costs and complexity, whether equivalent products can meet their clients' profile? Please also state the reasons for your answers.**

This obligation of assessing the possible investment alternatives does not appear in article 25(2) which only states :

*"When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses."*

This provision of the level 2 text is quite paradoxical and does not find equivalence in any other business regulation. **The maximum which could be required from actors would be an assessment of market practices by the management of the firm in the products' approval process, though it should not infringe anti-trust rules.** But we consider that such a requirement cannot be imposed in any case at the advisor level.

**Q10: Do you agree with the suggested approach for conducting a cost-benefit analysis of switching investments in the context of portfolio management or investment advice? Please also state the reasons for your answer.**

This provision of the level 2 text is another case of exceeding the content and target of the level 1 and Amundi strongly opposes this requirement.

In fact this rule would be impossible to apply in the context of discretionary portfolio management, in particular when directly investing in the securities' market. It would generate overwhelming cost and burdensome procedures which would prove (?) useless. If we want to keep clients, we must provide performance and this is the best reason for which we always try to avoid bad switching. This being said, portfolio management and prediction is a field where certainty does not exist. It is impossible to know ex-ante whether a choice is good or not.

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Let us add that portfolio management is not investment advice. When giving a mandate, clients expect portfolio managers to exercise full discretion in buying and selling assets in accordance with the terms of the mandate.

**Q11: Do you believe that further guidance would be needed with regard to the skills, knowledge and expertise that should be possessed by staff not directly facing clients, but still involved in other aspects of the suitability assessment? Please also state the reasons for your answer.**

Amundi considers that nothing has to be introduced on this topic which is the responsibility of investment firms. Due to the large scope of activities it would be difficult to provide adequate guidance. The regulation has to focus on achievable objectives (i.e. valuable advice including in case of robo-advice) but the way to achieve this goal has to remain in the hands of each actor.

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

Amundi is of the view that point 105 : *“Record-keeping arrangements adopted by firms must be designed to enable firms to track ex-post why an investment was made “* would be unjustified and often unworkable in the case of portfolio management. Such a request would be in contradiction with the discretion of portfolio management and a clear distinction must be set on this point with financial advice.

The reporting on portfolio management is quarterly and already contains all comments on investment decisions and nothing else should be required.

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