



**ASSOGESTIONI**

associazione del risparmio gestito

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**ESMA – European Securities and Markets Authority**  
103 Rue de Grenelle  
75007 Paris  
France

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### **Assogestioni's reply to ESMA's Consultation Paper on Guidelines on certain aspects of the MiFID II suitability requirements**

Assogestioni<sup>1</sup>, the Italian Investment Management Association, welcomes the opportunity to respond to ESMA's Consultation Paper on Guidelines on certain aspects of the MiFID II suitability requirements. Our members are directly concerned by the MiFID II suitability rule since they can be licensed to provide financial advice and portfolio management under Directive 2009/65/EC or Directive 2011/61/EU, and they are also indirectly affected since, at least in Italy, their funds are usually sold by financial intermediaries that offer investment advice.

First of all, we would like to express our appreciation for the work carried out by ESMA: the choice of introducing new guidelines on the suitability requirements is highly sensible and it would foster convergence across Europe in this part of the conduct of business rules.

We believe that the provisions of the proposed guidelines are consistent with Level 1 and Level 2 legislation and we mostly agree with them. Nevertheless, we would like to draw ESMA's attention to the following aspects:

- (i) the interaction (and the potential overlap) between the product governance provisions (under article 24, para. 2 of MIFID II and the relevant implementing measures) and the suitability requirements [under article 54 (9) of the (EU) Delegated Regulation 2017/565 and guidelines 7, 8 and 9]. In this context, while appreciating the initial attempts made by ESMA within the proposed guidelines, we would like to ask the Authority to make clear which are the additional measures (compared to those required by the product governance provisions) that advisers and portfolio managers have to adopt;
- (ii) guidelines 10 on costs and benefits analysis should better reflect the nature of the portfolio management service. As better detailed below, the

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<sup>1</sup> Assogestioni represents the interest of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around EUR 2.013 billion (as of August 2017).



discretion of the investment manager – who operates in accordance with the mandate received by the investor to whom he is bound by fiduciary duties – deserves to be better taken into account and reconciled with the effective needs of investors' protection.

Finally, we express our support to the ESMA's approach in regulating the suitability assessment in the context of automated tools: we appreciate the analysis of the specific issues raised by such tools as well as the proposed measures.

Whilst the consultation paper covers several topics, our reply will be only focused on those issues that are of the utmost importance to our members, therefore hereinafter we will answer only some questions included in the Consultation Paper.

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**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.**

As previously noted, we deem it useful to give further guidance on the interaction between the "Know your product" process and the similar requirement prescribed by the product governance discipline. Both requirements prescribe organizational measures. In this regard, it may be appropriate to further develop the proposed guidelines, so to prevent unnecessary duplication.

**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.**

We believe that the proposed guidelines should better reflect the nature of the portfolio management service. In particular, as regards the level of knowledge and experience needed by the client, paragraph 81 should distinguish between investment advice and portfolio management.

In fact, paragraph 81 - while allowing firms to conduct a suitability assessment based on the consideration of the client's portfolio as a whole - requires firms, in any case, and therefore also when firms provide portfolio management service, to assess the clients' knowledge and experience regarding each investment product. This seems to contradict the principle envisaged by the previous paragraph 36, letter b). In the latter, it is stated that when portfolio management is provided, the level of knowledge and experience needed by the client with regard to all the financial instruments that can potentially make up the portfolio may be less detailed than in the other circumstances. In the same paragraph, it is required that the client should at least understand the overall risks of the portfolio and possess a general understanding of the risks linked to each type of financial instruments that can be included in the portfolio.



According to the aforementioned provisions, it seems that in case of portfolio management a less thorough analysis is needed. In particular, since the investment decisions are made by an expert it may be not necessary to collect information in order to check the clients' knowledge and experience in relation to the features of each financial instrument potentially included in the portfolio, as long as it is possible to verify their general understanding of the risks linked to each type of financial instruments. We believe that this reading of the suitability requirements is the only one that can safeguard the features of the portfolio management, therefore we would see merit in modifying paragraph 81 in order to avoid the need to assess the clients' knowledge and experience in relation to each financial instrument.

Moreover, we deem it useful to give further guidance on how the suitability requirements have to be implemented in the context of a mandate. In particular, ESMA should specify that once the suitability test is conducted at the portfolio level, transactions that are compliant with the investment strategy (which has been assessed suitable for the client as a whole) can be considered suitable too, without the need to conduct further assessments.

**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.**

The attention to the costs structures of financial instruments in relation to the clients' needs is also foreseen within the product governance requirements. Also in this context, therefore, it could be useful giving market participants further guidance on how to implement in their procedures the requirement, avoiding duplication.

**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.**

One important innovation within the suitability requirements is the need for the investment providers to make a costs and benefit analysis when switching of investment occurs. Article 54 (11) of the Delegated Regulation, which prescribes the costs and benefits analysis, is clear in its intent, but guidance on its application is needed. In particular, from our point of view, in case of portfolio management it is essential that its application should be tailored to its features. We appreciate paragraph 96 of the proposed guidelines that goes in the right direction, but more details are needed.

Even if this requirement may be useful in the context of the provision of investment advice, it needs to be partially adapted when it comes to portfolio management. As a matter of fact, by definition investment decisions are made by an investment manager, who operates in accordance with the mandate received by the investor to whom he is bound by fiduciary duties. In this context, the principle-agent problems



are already tackled by a series of provisions, like the rules on conflicts of interest and inducements. Moreover, the organizational requirements already impose the adoption of an investment process (i.e. policies and procedures) which clearly describes all decisional steps, from strategy asset allocation to the tactical one, in order to ensure that investment decisions are only made in the clients' best interest, in line with the conflict of interest policy.

In light of the above, we believe that in the case of portfolio management the cost and benefit analysis referred to in Article 54 (11) should always be considered to be respected by having a pre-existing investment process and policy of conflict of interest, regardless of the use of "common portfolio strategies" or "bespoke mandates". In this respect, in the case of portfolios management, there should be no distinction between supporting guidelines 96 and 97.

Should you have any queries, please do not hesitate to contact us.

Yours faithfully,

The Director General