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Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic

Suitability

Subject Matter

Suitability and appropriateness

Question

When a firm provides the investment service of advice or portfolio management to a client who is unwilling to fully disclose information on his/her financial situation, can the firm assess the suitability of the envisaged transaction? If yes, under which conditions?

10-10-2016

Original language

[ESMA35-43-349 MiFID II Q&As on Investor protection Ch2, question 7]

When providing investment advice or portfolio management services, the firm must collect from the client all 'necessary information' required by Article 25(2) of MiFID II and Article 54(2) of the MiFID II Delegated Regulation. Moreover, paragraph 8 of the aforementioned Article 54 clarifies that in cases where the investment firm does not obtain such information, it shall not recommend investment services or financial instruments to that client or potential client.

The required information has to be considered in light of all the features of the investment advice or portfolio management services. In any case, the firm has to be able to assess the client's ability to understand and financially bear the relevant risks associated with the investment. Nevertheless, the depth and detail of the required information are subject to the proportionality principle, for example they can vary depending on the complexity, risks and structure of the financial instrument and on the nature and extent of the service provided. In particular, it should be reminded that for more complex and risky products, as well as for the illiquid ones, the firm should consider whether more in-depth information may need to be collected, so as to be able to carry out the aforementioned assessment¹.

Accordingly, it is the responsibility of the firm to decide whether, in limited situations, the suitability of certain products could be assessed without getting full disclosure about a client's financial situation. That may be the case, for example, where a client discloses only a part of his/her assets but also provides adequate information to evidence all his/her existing liabilities (such as bank loans, outstanding debts, etc.), and that no further liabilities exist. In these situations, the information provided by the client about his/her liabilities needs to be comprehensive. The firm must be capable, on the basis of the information disclosed by the client, to assess whether the client's assets are sufficient for him/her to bear any related investment risks, including the possible losses that can occur when investing in the

respective instrument.

In accordance with Article 54(7) of the MiFID II Delegated Regulation, firms are responsible for ensuring that the information collected from clients is reliable and need to take reasonable steps to this effect. They could, for example, check such information against other relevant sources that may be available to the firm itself². This could be the case, for example, for a bank providing not only investment services, but also traditional banking services, that may have knowledge of an existing bank loan or other outstanding debts and liabilities. In any case, if the firm becomes aware that the information provided by the client about his/her existing liabilities is not accurate, it should refrain from giving investment advice or offering portfolio management services.

The fact that the suitability of the product/service was assessed without getting full disclosure about the client's financial situation should also be set out clearly in the suitability report provided to the client.

1. This is in line with ESMA's 'Guidelines on certain aspects of MiFID suitability requirements' published in 2012 [Ref: ESMA/2012/387].
2. This is in line with ESMA's 'Guidelines on certain aspects of MiFID suitability requirements' published in 2012 [Ref: ESMA/2012/387].