

Milan, 23 December 2016

Prot. 120/16
MFE/gc

ESMA
CS 60747
103 rue de Grenelle
75345 Paris Cedex 07
France

Re: ASSOSIM contribution to ESMA Consultation paper “*Draft guidelines on MiFID II product governance requirements*”

Assosim¹ welcomes the opportunity to comment on the ESMA consultation paper in subject and is pleased to provide the following observations.

Q1: Do you agree with the list of categories that manufacturers should use as a basis for defining the target market for their products? If not, please explain what changes should be made to the list and why.

Assosim believes that the proposed list should not provide a minimum set of categories that manufacturers must take into account when defining the relevant target market. Firstly, the proposed approach seems to be not in line with the proportionality principle set out in Level 2 Directive dated 7 April 2016 (*draft*) (the **Directive**) and referred to by the same ESMA throughout the CP. Secondly, in our opinion such approach is too rigid and does not consider products’ specific features which may be very different. To this regard, we disagree in having a uniform methodology that applies in the same way to, by way of example, both plain vanilla and complex products.

¹ *Associazione Intermediari Mercati Finanziari - ASSOSIM* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. Assosim has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

With reference to the “clients’ objectives” and “clients’ needs” items, Assosim believes that such two categories should be jointly considered -thus becoming one sole category- since they are strongly interconnected once observed that a client’s need directly leads to the identification of his/her objectives.

Q3: Do you agree with the proposed method for the identification of the target market by the distributor?

Considering the reference to the six categories provided for the manufacturers in par. 26 of the CP, as already pointed out in our answer to Q1, we would suggest ESMA to consider such set as containing optional (and not a minimum set of) indicators to be taken into account by distributors when identifying the actual target market. As anticipated above, this approach would provide for greater flexibility and adherence to the proportionality principle.

As regards the distribution strategy, ESMA states that “*the manufactures should (...) also specify the preferred acquisition channel (face-to-face, via telephone, on line, etc.) and, if relevant, specific design features of the acquisition channel*”. About this point, Assosim believes that the distribution channels could be more properly defined by distributors as they are in a better position than manufacturers to assess them in a more appropriate and suitable way (also considering that – as ESMA correctly recognizes – they have direct contact with the client base). Therefore, we would propose ESMA to reconsider such aspect providing a greater flexibility for distributors (with no need of reporting any deviation from the distribution strategy defined by manufacturers).

The need for a different approach is particularly crucial when considering how the product governance requirements work on the secondary market, where there is generally no relation between manufacturers and the firms carrying out execution services. Moreover, these firms could not be in the position to limit the activity of their clients on the basis of their exclusion from the relevant target market once the execution only/appropriateness/suitability requirements (as the case may be) are fulfilled. It is also worthy considering that -upon the relevant terms and conditions- clients can have their orders executed even if such tests are not satisfied.

In addition to the above, we note that the envisaged reporting obligation upon the distributors is, under a concrete perspective, quite unfeasible for those firms acting on secondary markets as they generally do not have any relationship with manufacturers.

Furthermore, we note that it is also practically unviable applying the target market discipline to intermediaries providing the individual portfolio management as they carry out the investment choices on the basis of a mandate by the client pertaining to a specific line of investment in relation to which the suitability test is performed. This test takes into account the clients’ needs and objectives, knowledge/experience and financial situation, so allowing to combine the most suitable line of investment with the client’s profile. Therefore, we would propose to limit the target market regime only to firms offering or recommending products (thus excluding those firms carrying out execution services and individual portfolio management) in line with art. 10

of the Directive. Anyway, subordinately, ESMA guidelines could be at most applied to execution services only in relation to macro-categories of financial products (and not with reference to products singularly considered).

Q4: Do you agree with the suggested approach on hedging and portfolio diversification aspects? If not, please explain what changes should be made and why


Assosim agrees with the possibility to waive the target market provided by the manufacturer for diversification or hedging purposes. Notwithstanding, we would like to stress that diversification and/or hedging cannot constitute an “exception” to be justified on a case-by case basis as they are requested to satisfy clients’ best interests. Therefore, the firm should be in the position to pursue such objectives without any requirement to explain and report the reasons of deviation to the manufacturer.

Q6: Do you agree with the proposed approach for the identification of the «negative» target market?

Bearing in mind the rationale for the negative target market requirement (i.e. identifying a group of clients to whom the product should not be offered or recommended), we believe that it could be too burdensome to have such obligation effective for all kind of products, including plain vanilla ones. Therefore, we would suggest to request the identification of the negative target market only with respect to products having a complex nature (such as, by way of illustration, CoCo bonds).

We remain at your disposal for any further information or clarification.

Yours faithfully,



Gianluigi Gugliotta
Secretary General