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Dear Sir or Madam

Consultation on Guidelines on certain aspects of the MiFID suitability requirements

Barclays is grateful for the opportunity to comment on ESMA's consultation paper. Barclays welcomes this guidance which enhances clarity on certain aspects of the MiFID suitability requirements. This letter sets out a few of our key points. Our full response to your consultation is covered in Annex 1.

Responsibility upon clients to keep firms aware of changes to circumstances

There should be a responsibility on clients to keep firms informed of developments or changes in circumstances that may affect the suitability assessment, outside of any periodic assessments being conducted by firms.

Difficult to guarantee an acceptable level of loss

The consultation suggests that firms should ask clients of their acceptable level of loss over a given time period. It is important to understand that whilst an indication or tolerance for losses is useful, it cannot guarantee that any given investment strategy designed in consequence and in good faith will always lose no more than the tolerance level. This may mislead the investor into thinking that his losses are capped when notwithstanding any absent stop loss or some other strategy that they are not.

Arrangements to ensure all available information is considered within assessment

We fully support this guidance that suggests firms should have in place appropriate arrangements to ensure that all relevant information including the clients understanding of the risks, their financial situation, investment characteristics and potential conflicts are considered when conducting the assessment.

We hope that these observations and those in the Annex are useful and are, of course, ready to discuss them at your convenience.

Yours faithfully

Richard Quinn

ESMA are consulting draft guidelines on MiFID suitability requirements (Article 19(4)) related to the obligations of investment firms.

Q1: Do you agree that information provided by investment firms about the services they offer should include information about the reason for assessing suitability?

Yes. Also, there should be a responsibility on clients to keep firms informed of developments that may affect the assessment – possibly by way of a mechanism provided by the firm. Clients should be reminded to provide accurate and reasonable assessment – as any false or exaggerated data (e.g. in order to claim eligibility for a certain strategy) will distort outcomes.

Q2: Do you agree that investment firms should establish, implement and maintain policies and procedures necessary to be able to obtain an appropriate understanding regarding both the essential facts about their clients, and the characteristics of financial instruments available for those clients?

Yes. Again however, client circumstances change. There must be a responsibility, clearly stated, for clients to keep investment firms aware of changes to any assessment of suitability that is relevant to that assessment. In circumstances where a recommendation or a decision is made on the basis of an assessment which has become out of date (where the firm is unaware, and the firm has acted reasonably on the basis of data held by the firm), the client must be made aware that this is not the responsibility of the investment firm. There may be exceptions to such responsibility whereby the firm has contracted with client beyond a simple one-off advisory service, when it seems clear that the onus is on the firm to check in with the client on a regular basis.

The investment firm should state what services are provided where it has already contracted with client on an ongoing basis.

Q3: Do you agree that investment firms should ensure that staff involved in material aspects of the suitability process have the skills and the expertise to discharge their responsibilities?

Yes; we fully agree with and support the guidance.

Q4: Do you agree that investment firms should determine the extent of information to be collected about the client taking in to account the features of the service, the financial instrument and the client in any given circumstance?

We disagree with the statement in para 35:

Information to be collected will also depend on the needs and circumstances of the client. For example, a firm is likely to need more detailed information about the client's financial situation where the client's investment objectives are multiple and/or long-term, than when the client seeks a short-term secure investment.

Secure investment is not defined; recent experience indicates that a secure investment can become insecure very quickly.

Q5: Do you agree that investment firms should take reasonable steps (and, in particular, those out-lined above) to ensure that the information collected about clients is reliable and consistent?

There are inherent risks in 38 c:

c) instead of asking a client whether he feels comfortable with taking risk, the firm could ask the client what level of loss over a given time period he would be willing to accept, either in the individual investment or on his portfolio.

It must be made clear that whilst this indication or tolerance for losses is useful, it cannot guarantee that any given investment strategy designed in consequence and in good faith will always lose no more than the tolerance level. Thus it may mislead the investor into thinking that his losses are capped when – absent stop loss or some other strategy – they are not.

In Para 39, they should ensure that they have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results

Q6: Do you agree that where an investment firm has an ongoing relationship with the client, it should establish appropriate procedures in order to maintain adequate and updated information about the client?

We agree that an investment firm should establish appropriate procedures in order to maintain adequate and updated information about the client. However, a responsibility also lies with the client to ensure that between periodic reviews conducted by the firm that the client keeps the firm updated with any changes about themselves that would potentially affect the investment decisions being made.

Additionally, clients may be penalised due to changes in circumstances in some cases. For example, a once suitable product, which due to a change in circumstances may become unsuitable and the investor advises its disposal on that basis – this may crystallise losses or gains with adverse tax consequences or result in exit penalties for the client. Therefore, in certain instances it may be appropriate for a client to be able to maintain a position in an instrument that has become unsuitable in order to prevent crystallising a loss.

Q7: Do you agree that regarding client information for legal entities or groups, the investment firm and the client should agree on how the relevant client information will be determined and, as a mini-mum, information should be collected on the financial situation and investment objectives of the beneficiary of the investment advice or portfolio management services ('end client')?

Yes. However we disagree with para 43 which requires suitability to be based on the lowest level of knowledge or experience in all cases.. For example, where data is made available to a trustee board, would it need to be pitched to the junior/trainee trustee in all cases.

Q8: Do you agree that in order to match clients with suitable investments, investment firms should establish arrangements to ensure that they consistently take into account all available information about the client and all characteristics of the investments considered in the suitability assessment?

Yes; we fully agree with and support the guidance.

Q9: Do you agree that investment firms should establish and maintain record-keeping arrangements covering all relevant information about the suitability assessment? Please also state the reasons for your answer.

Yes; we fully agree with and support the guidance.