

Comments on ESMA's consultation paper
„Guidelines on certain aspects of the MiFID suitability requirements“

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General remarks

I have been member of the executive board of Union Investment (1994-2011), President of EFAMA (2002-2005) and of BVI (2007-2010). I am currently, among some other assignments, editorial advisor and member of ESMA's investment management consultative group and, in that capacity, follow ESMA's activities in that area.

I welcome ESMA's initiative on suitability as the quality of investment advice is a key issue. I have some comments on selected issues of the consultation paper.

Q4: Do you agree that investment firms should determine the extent of information to be collected about the client taking into account the features of the service, the financial instrument and the client in any given circumstance? Please also state the reasons for your answer.

I agree that the extent of information to be collected may vary according to the nature of services provided and elements regarding the clients' sphere, as pointed out in para. 27 (b) and (c) of the paper.

According to para. 27 (a), ESMA has the view that the extent of information to be collected also depends on the type of instrument to be recommended. I believe ESMA should reconsider this context and review the wording of para. 28 and 29 in order to avoid misunderstandings about key features of the process of providing investment advice.

My understanding of the MiFID approach is that a recommendation of a financial instrument can – strictly speaking - only be considered after sufficient information about the client has been gathered. ESMA's approach could be understood as if the financial instrument could be the starting point of the advisory process and the information to be gathered resulting from the particular instrument.

For example, in para. 29 ESMA appears to suggest that information about the client's investment horizon would only have to be gathered if the recommendation of an illiquid instrument is considered. This would be, in my eyes, not be consistent with the MiFID approach whereby the client profile is the starting point which determines the suitability of recommendations, as ESMA clearly points out in para. 9.

Of course the advisory process can be iterative. If the client profile leads to the possible recommendation of a complex product it may be necessary to collect more in-depth information about the client as ESMA points rightly out in para 28. If the client profile leads to an illiquid instrument (as a result of a long-term investment horizon of the client) it may be ne-

cessary to double-check whether the client is really prepared to hold the instrument until maturity. Nevertheless the client has to be the starting point.

I would therefore recommend that ESMA clarifies this wording to avoid misunderstandings.

ESMA could also make a more clear statement that the „necessary information“ about the client mentioned in para. 9 represent a minimum standard for client information that have to be collected at the beginning of the advice process.

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? Please also state the reasons for your answer.

I agree in principle.

However I would propose to replace the phrase „match clients with suitable investments“ by „assure that recommended investments are suitable with regard to the client's profile“.

Such a wording would underline that the client's profile is the starting point and the recommendation the result.

This general principle could be concretised more precisely in para. 46. First of all, it should be required that the matching process assures that:

- a) the risk of a recommended instrument fits to the level of risk the customer is willing and capable to bear
- b) the characteristics of a recommended instrument take into account the period of time the investor is willing and capable to hold the instrument
- c) the complexity of a recommended instrument takes into account the capacity of the investor to understand this instrument and its payout profile

In particular, I would point to the importance of item b). There is a general awareness of the importance of the „risk match“, and some analytical work has been conducted on this issue¹. There is much less awareness of the „duration match“, which is however either important for the client and the quality of his decisions.

There is, as ESMA mentions in para. 46 b), a relationship between risk and return; but there is also a relationship between time horizon, risk and return, which the investor should be able to understand and take into account. I believe that – as a result - more private household savings would be invested long-term.

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¹ See e.g. FSA, „Assessing suitability“, guidance consultation paper, January 2011