



European Securities and Markets Authority
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RESPONSE TO ESMA CONSULTATION ON CERTAIN ASPECTS OF MiFID SUITABILITY REQUIREMENTS

The Federation of Finnish Financial Services (“FFP”) is a trade body that represents the financial industry in Finland. Our members include banks, investment firms, investment funds, insurance companies and pension insurers. Below you will find our response to the consultation on MiFID suitability requirements.

General remarks

ESMA has considered the contents of the consultation paper in the light of the MiFID review proposals, and confirms that proposals for guidelines, which are based on the current MiFID requirements, are not affected by those proposals. From our viewpoint, contrary to ESMA’s view, the guidelines would impose new regulation and do in some aspects go further than the MiFID implementing directive, for example an investment firm’s obligations to collect information regarding a client’s marital status or family situation. From our point of view further regulation should be considered together with the MiFID review, perhaps on level 2.

The proposal contains detailed requirements for client information gathering. The information of a client’s marital status and family situation might form delicate information of a personal nature. The extent of information to be collected may conflict with EU data protection regulation or other circumstances. Also the aspects of investor confidence may not be strengthened either, because the benefits of information gathering, especially delicate information concerning a person, are not clear to most customers. At the moment clients are already informed about the reason for gathering information.

Information to clients about the suitability assessment

Q1: Do you agree that information provided by investment firms about the services they offer should include information about the reason for assessing suitability? Please also state the reasons for your answer.

Yes, though it should not contravene the fundamental basis that the client finally makes the decision whether to invest or not.



Arrangements necessary to understand clients and investments

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? Please also state the reasons for your answer.

The proposal contains detailed requirements for client information gathering and goes further than Article 19 (4) of MiFID and Article 35 (1) of the MiFID implementing directive. The information regarding a client's marital status and family situation might be delicate information of a personal nature. The extent of information to be collected may conflict with EU data protection regulation. Furthermore, different treatment of customers depending on for example customer's marital status seems to be inappropriate procedure. Client's marital status or family situation should not affect the service provided to him or her.

Qualifications of investment firm staff

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? Please also state the reasons for your answer.

Yes.

Extent of information to be collected from clients (proportionality)

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? Please also state the reasons for your answer.

The investment firms are obliged to obtain information before providing certain financial services to clients. The extent of the information to be collected is not likely to vary much if it is collected prior to providing the service. It is difficult to predict what kind of information has to be collected prior to the suitability assessment being made for the client. It is burdensome to alter the information gathered client by client.

The wording raises question relating to definitions. For instance, what does the referral to "risky financial instruments" mean? Or what is meant with "risky and illiquid financial instruments"? It is troublesome that ESMA is using terms that are not commonly defined and vary from market to market. There is not even a unified EU understanding on which elements make financial instrument "risky" and "illiquid" vs. less riskier and more liquid financial instruments.

It is the starting point that advice should not be against investment objectives. However, this should not prohibit the firms from executing orders given by client that would be against the prior given investment objective. Thus it should be clear that there is a difference for providing investment advice and responsibilities for that to be separated from



a client's possibility to invest in a financial instrument even though it would not be in accordance of his or hers investment objectives.

It should be noted, that the directive does not categorically prohibit providing services to clients who do not want to provide all requested information to the service provider.

Reliability of client information

Q5: Do you agree that investment firms should take reasonable steps (and, in particular, those outlined above) to ensure that the information collected about clients is reliable and consistent? Please also state the reasons for your answer.

According to the Article 37 (3) MiFID implementing directive, an investment firm shall be entitled to rely on information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete. The implementing directive does not contemplate a specific requirement for the investment firm to establish special procedures to ensure that the client is telling the truth. The firm makes the suitability assessment on the basis of the information as received. Additionally the clients may also change their answers when they correct mistakes on web based services.

There is clear rationale that the firms should take reasonable steps by having adequate processes and obtaining adequate information based on questions that are in relation to services offered but this responsibility should not be derived to the responsibility to not to rely information given by the client. The client makes the final decision on an investment and must bear the responsibility, even if he or she is not willing to provide correct information.

Updating client information

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? Please also state the reasons for your answer.

This is reasonable requirement in order for the firms to know their client. However, if there are no objective reasons known to the investment firm to update the client information, the update should not be needed more frequently than e.g. annually. It should also be noted that clients are obliged to inform the service provider about relevant changes in their circumstances.



Client information for legal entities or groups

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 minimum, information should be collected on the financial situation and investment objectives of the beneficiary of the investment advice or portfolio management services ('end client')? Please also state the reasons for your answer.

It remains unclear as to what the investment firm and the client should agree upon.

It should also be adequate that a client has an authorized representative that has unlimited rights to decide on investments to be executed for the beneficiaries. The assessment of the representative should be adequate what comes at least to knowledge and experience and investment objective of the client and/or "end client".

Arrangements necessary to ensure the suitability of an investment

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.

It is not possible that the firm could project all future events that effect on client ability to finance investments or bear the risks of at least long term investments. The evaluation must be based on the situation when suitability assessment is made and the unknown changes in client's future financial situation or the general development on financial markets (e.g. sovereign debt crises) can never be evaluated. Thus firms should not be responsible to provide instruments which will be suitable regardless what changes occur in the client's situation or market environment, even if it would make the instrument unsuitable based on new circumstances. This requirement should be deleted.

The evaluation of suitability must be based on the situation when investment advice is provided. The future changes should be taken into account if and when there is a new evaluation due to the client's request or an investment firm's own initiative. Different credit limits/market risk controls should be adequate to ensure that a client is capable to bear the risk of investments on regular basis.

Record-keeping

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.

The investment firms already have record-keeping arrangements covering the information concerning the suitability assessment. However all relevant information means data storage of client's personal circumstances, such as marital status or family situation.



The extent of information to be collected may conflict with EU data protection regulation or other circumstances.

Focus should be on documenting that the client has received adequate information and that the firms record the information that assessment is based on.

FEDERATION OF FINNISH FINANCIAL SERVICES

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