

ESMA

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Your reference, Your message of	Our reference, contact person	Extension	Date
	BSBV 64/Dr. Priester/of	3132	1st February 2012

ESMA- guidelines on certain aspects of the MiFID suitability requirements

- The Bank and Insurance Division of the Federal Economic Chamber representing the entire Austrian Banking Industry appreciates the possibility to comment on "ESMA consultation - MiFID-suitability requirements" as follows:
- As most of the mentioned points are already regulated in Austrian law no further and more stringent regulations are required.

Q 1: We agree to provide such information but only in a concise way.

Q 2: Basically yes but nevertheless too many obligations to set up extra policies could hamper the course of business without adding any quality to the investment services provided.

Q 3: This requirement is already implemented in § 17 Abs.1 Z 4 WAG (Securities Supervision Act), therefore we don't need further requirements.
Notwithstanding the above mentioned fact, in order to avoid a too broad categorisation of "staff", in the paragraphs 24 + 25 should be pointed out more clearly that only relevant staff in the sense of the headline (= staff involved in material aspects of the suitability process), and not every staff, are affected by the requirements.

Q 4: Yes, however this requirement already exists according to MiFID and WAG (Securities Supervision Act).

Q 5: In our view, section III.V. of the paper is referring to a question of proportionality between information provided by clients versus duty of investigation of the bank. This proportionality has a major role and should be reflected in the ESMA guidelines accordingly: if information provided by a client is not apparently wrong, the bank should be allowed to rely on it.

We also would be in favour of clarification what kind of information should be the basis for evaluation: only information with regards to investment services or also to other bank services rendered for a customer.

Q 6: This requirement also already exists according to FMA interpretation (every 3 years) and therefore further stringent requirements were needed.

Q 7: This requirement also already exists according to Austrian Corporate Law.

Q 8: This requirement also already exists according to §§ 44 & 45 WAG (Securities Supervision Act).

Q9: We agree record-keeping arrangements to be a valuable tool against failures. However, due to potential risks deriving from data protection and data privacy laws we would not regard telephone recordings an adequate measure.

Yours sincerely,

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