ORTEC FINANCE

Ortec Finance bv
Postbus 4074
3006 AB Rotterdam
Boompjes 40
3011 XB Rotterdam
Nederland

Tel. +31 (0)10 700 50 00
info@ortec-finance.com
www.ortec-finance.com

K.v.K. Rotterdam: 24421148
IBAN: NL40INGB0673648877
BIC: INGBNL2A

Attn: European Securities and Markets Authority (ESMA)
Reference: Response to consultation paper (CP)

Rotterdam, 13 October 2017

Dear Sir/Madam,

Hereby I would like to submit my response to the consultation paper on draft guidelines on certain aspects of the suitability requirements under the Markets in Financial Instruments Directive (MiFID II).

The two subjects we like to address are :

1) the concreteness of goals of the client
2) the ability to take risk or the capacity to bear losses

In table 1 below the information is defined necessary to determine suitability from a MiFID2 perspective.

Table 1. Requirements for assessing suitability

Information to be obtained when assessing suitability	Requirements
Client's knowledge and experience[5]	• the types of service, transaction and the regulated investments with which the client is familiar; • the nature, volume, frequency of the client's transactions with regulated investments; and • the level of education, profession or (if relevant) former profession of the client.
Client's financial situation*[6]	• the source and extent of the client's regular income; • the client's assets, including liquid assets, investments and real property; • the client's regular financial commitments; • the ability to bear losses.
Client's investment objectives	• the client's investment horizon; • the client's risk preferences, risk profile and risk tolerance; and • the purposes of the investment.

Ad 1) The concreteness of goals

The questions in this perspective are:

What is the definition of suitability?

Is it necessary to make the goal concrete?

In our opinion the standard questionnaire fails to make the goal concrete in many cases. As a result it is not feasible to determine how much wealth is needed to realize a goal, and thus it remains unknown how realistic the goal is. The client does receive insight into the short-term risk impact, often translated into risk or volatility at a one-year horizon. But what is missing from our point of view is insight into the information required to take a financial decision, information about the downside risk on the long term, and/or the feasibility of reaching the goal. In summary, Is it realistic to reach your goal?

In summary, it can be said that the current method for determining a risk profile falls short in case you don't make the goal concrete. If the probability to reach your goal is small, you don't have a suitable solution.

Example

Legislation and regulation demand that an investment portfolio must connect to the specific situation of the customer and his or her goal(s). In other words, there must be "suitability", and the investment portfolio selected must be appropriate for the client. Though many questionnaires do ask about the investment goal of the client, this goal is almost never made concrete. The following example shows why a concrete goal is so important.

During the risk assessment the client indicates that he wants to pay off his mortgage. But he is not asked about the size of the mortgage, so the goal is not made concrete. But when you look at the potential developments of the investment portfolio under various economic scenarios, it shows how important it is to do so.

Let's assume the mortgage amounts to € 300.000,-. An expected market development results in a capital of € 200.000,-, poor market conditions result in € 150.000,- while good market conditions lead to an expected end value of € 280.000,-. Thus it turns out that the € 300.000,- goal is not even attainable under a best case scenario.

So in this case we would say: it is not a suitable solution. In our opinion it is important to show the client the impact on:

- The short term risk, downside risk
- The long term risk, good, expected and poor scenario
- Feasibility / Probability to reach a goal

Ad 2) the ability to take risk or the capacity to bear losses

The question with this subject is: how to define the capacity to bear losses?

A lot of providers give advice about a product or portfolio. Assessing the capacity to bear losses requires to use all information of the client. When using all this information, in many cases you need to make a financial plan for the client. Is this necessary in the view of the regulator to do so? If not, what are the requirements to determine the capacity to bear losses?

ORTEC FINANCE

Another question is: ***who*** determines the capacity to bear losses, the client or the advisor? In our opinion only the client can determine if he or she is able to manage the consequences of losses and it is the responsibility of the advisor to give the best information and insights to the client so the client can decide if he/she can take the risk.

We believe it is important to define 'the capacity to bear losses' in a more detailed way.

Thanks for your answers in advance.

Kind regards,

Ronald Janssen
Managing Director

Private Client Solutions

Ortec Finance
Boompjes 40, 3011 XB Rotterdam
P.O. Box 4074, 3006 AB Rotterdam
The Netherlands

T +31 (0) 10 700 56 70
M +31 (0)6 52 06 56 57
F +31 (0)10 700 50 01
E ronald.janssen@ortec-finance.com
W www.ortec-finance.com

For an introduction to Private Client Solutions click here