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ESMA
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Dear Sirs

Consultation Paper: Guidelines on certain aspects of the MiFID II suitability requirements

Majedie Asset Management specialises in the active management of portfolios of publicly traded equities across a limited range of strategies. We are authorised and regulated by the Financial Conduct Authority. As at 30 September 2017, we managed over £14.5 billion in a combination of UCITS funds (Irish and UK) and segregated portfolios for professional clients. We do not provide portfolio management to retail clients.

We wish to comment to the Consultation Paper.

We note that Para. 39 of the proposed Guidelines replicates Para. 38 of the 2012 Guidelines (ESMA/2012/387), except for the words "or portfolio management". This has significant implications for the provision of portfolio management for per se professional clients. We do not see the rationale for ESMA to depart in this respect from the 2012 Guidelines.

We have a number of other concerns about the proposed Guidelines. These are:

- The proposed Guidelines do not distinguish between legitimate concerns about suitability in the context of retail clients and the realities of portfolio management for professional clients.
- Given the nature of portfolio management for professional clients, with documented investment and risk parameters, the additional cost-benefit processes should not be needed.
- Portfolio management for professional clients typically involves an ongoing process of adjustment. We accept that applying the concept of 'switching' on a transaction-by-transaction basis may be relevant to at least some retail client portfolios. However it would not be proportionate to take this approach for professional clients (whether per se or elective). Also Article 54(11) of the Delegated Regulation of 25.4.2016 refers to "When providing investment advice or portfolio management services that involve switching investments ....", which indicates that there are portfolio management services which do not involve switching investments.

If 'switching' means, for example, selling equity of one issuer and buying equity of another issuer, that would not be a proportionate approach. If that is not intended, the Guidelines should make this clearer. We appreciate that, for example, changing from direct investment in the equity of an issuer to gaining the same exposure through a CFD would need to be addressed separately in the Guidelines.

We consider that a number of specific changes should be made to Guideline 10:

- The obligation under Guideline 10 should be disapplied for regulated firms when providing portfolio management services to professional clients under an investment management agreement. This already seems to be contemplated in paragraph 3 of the proposed Guidelines, on page 36 of the Consultation Paper.
- The concept of 'switching' should be limited to sales and purchases of instruments, linked by a same intent, which entail a conflict of interest between the firm and its client, such as the generation of commissions or of fees.

Yours faithfully

Philip Stark

Legal Director