CONSULTATION ON GUIDELINES ON APPROPRIATENESS AND EXECUTION ONLY

Amundi Response

Q1: Do you agree with the suggested approach on providing information about the purpose of the appropriateness assessment? Please also state the reasons for your answer.

Amundi welcome this consultation of ESMA and the possibility to express our views on the proposed provisions. In fact, these could have some far-reaching consequences on funds' distribution and, in some extents, on the Capital Market Union. There are few cases where we receive direct subscription to our funds from clients, but we are concerned by any new regulation that could affect their placement.

Before answering to this Q1, we would make a general comment on the topic addressed in the consultation. Since the distinction on what is required for appropriateness tests between retail clients and professional clients is not that clear, it is of utmost importance to avoid introducing measures that could result disproportionate with regards professionals. In fact, most subscriptions of financial products – especially investment funds – achieved without previous advice and even more, through an execution-only mode, come from professionals or from individuals who are autonomous and who do not need any support. For these two categories of investors, we consider that some additional provisions proposed in this consultation are quite superfluous and could be detrimental in terms of EU competitiveness. Therefor we would urge ESMA to specify that these additional provisions would not apply to professional or autonomous clients.

Let us mention that for these autonomous individuals, many stakeholders were wishing the MiFID Quick-fix to provide alleviation of the very strict conditions that are required for opting up into the professional category. As long as this alleviation is not in place and many autonomous clients remain in the retail category, we consider that any new requirement with reference to the appropriateness test could result detrimental for both investors and products' providers.

For what is of Q1 and Guideline 1, we have some concern with the following statement: "[it is] the responsibility of the firm, and not the client, to decide on the appropriateness of the investment service or product. Therefore, firms should avoid stating or giving the impression that the client takes this decision" (page 9, point 17). Especially in case of 'execution-only' services, which is the most current subscription mode for professionals and autonomous clients, such approach is contradictory: it may be useful that the firm would warn against special risks or complexity of a product, but it is up to the client to make his mind.

Of course, in a place where retails clients are deprived from financial advice at reasonable price, they may be obliged to judge investments proposals by their one and they will adopt more frequently the execution-only mode. This situation can result from the ban of so-called 'inducements' – retrocessions of management fees is a more appropriate terminology – that deter banks from proposing funds to their clients. However, most retail clients in the EU have access to advice thanks to banks' networks. Therefore, usually, they do not face this problem. Otherwise, the only way through is automated digitalized tests, with all provisions imagined by ESMA in the present consultation, hoping that clients will be patient enough for this obstacle course.

In this respect, we are somewhat surprised by the repeated considerations introduced in this consultation on retrocessions. Since the subject was debated for years in Brussels and the MiFID II Directive gave a final solution agreed by co-legislators, we consider that ESMA should probably abide to what was decided without casting suspicion on a distribution mode which prevails in most EU countries and has many advantages – though nothing is perfect in this world.

Q2: Do you agree with the suggested approach on the arrangements necessary to understand or warn clients? Please also state the reasons for your answer.

In line with what we explain in reply to Q1, we consider that provisions introduced in Point 23 to 25 are excessive in comparison to the objective, which is only to know whether the firm should warn the client or advise him not to invest.

Q3: Do you agree with the suggested approach on the extent of information to be collected from clients? Please also state the reasons for your answer.

Yes, we do agree and we would stress ESMA to insist on the fact that proportionality must fully apply when addressing professionals and autonomous individual investors. In addition, we consider that in case of dedicated funds to professional clients, such test should not be required since it would interfere into our relation with these clients in a way which, in most cases, would be irrelevant.

Q4: Do you agree with the suggested approach regarding the appropriateness assessment relating to a service with specific features (paragraph 34 of the Guidelines)? In particular, do you agree with the examples provided (bundled services and short selling), or would you suggest including other examples? Please also state the reasons for your answer.

Yes, we agree with paragraph 34 of the draft Guidelines.

Q5: Do you agree with the suggested approach on the reliability of client information? Please also state the reasons for your answer.

No, we do not quite agree, especially with paragraph 38 and 39 of draft Guidelines which in our view would go beyond reasonable steps mentioned in § 36, especially for professional and autonomous clients customers, and even more in case of execution-only services. These provisions could be felt by clients as a police investigation. Only in case of flagrant contradiction could it make sense to pursue the investigation required in § 38 and 39. Article 55 (3) of Delegated Regulation specifies that "*An investment firm shall be entitled to rely on the 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*."

Q6: Do you agree with the suggested approach on relying on up-to-date client information? Please also state the reasons for your answer.

Except in case of elderly individuals, we consider that the updating of the appropriateness test should only occur in case a client would invest in a completely different complex product. Otherwise, the updating is not necessary since one can consider expertise and knowledge will progress over time.

We consider that provision in § 44 of draft Guidelines could be felt by clients as intrusive. Provision in Draft § 45 is quite disproportionate (approval of two staff members) in our view. In addition, the consideration made on the "heightened conflict of interest risk, e.g. in self-placement and where the

firm receive inducements for the distribution of a product" is irrelevant in the case of execution-only which is the most frequent mode of subscription when advice is not provided, as already explained.

This overall approach would only be necessary when retail clients cannot find advice easily or at a reasonable cost, and can only but rely on digital solutions, with all the limits that it entails (see Q1).

Q7: Do you agree with the suggested approach on client information for legal entities or groups? Please also state the reasons for your answer.

Yes we do.

Q8: Do you agree with the suggested approach on the arrangements necessary to understand investment products? Please also state the reasons for your answer.

No we do not, for the same reason given in our answer to Q6.

Q9: Do you agree with the suggested approach on the arrangements necessary to assess the appropriateness of an investment or else issue a meaningful warning? Please also state the reasons for your answer.

The proposed Guideline 8 is very prescriptive and would only make sense in case the appropriate assessment is achieved through automated tools.

Q10: Do you agree with the suggested approach on the effectiveness of warnings? Please also state the reasons for your answer.

We could agree with this approach if it targets digital relationship, but we strongly oppose the following provision introduced in § 71 of Guideline 9, for the same reason already mentioned in Q6:

In this context, firms should have policies and procedures identifying ex-ante whether there are any conditions and criteria under which a client would not be allowed to proceed with a transaction after having received a warning. For example, a firm could take into account situations where there is a heightened risk of conflicts of interest because the firm is selling its own investment products (or investment products issued by entities of the same group) or actively marketing investment products from within the firm's range. Another factor that could be considered is a high level of complexity or risk of products offered or demanded. Furthermore, firms should evaluate the overall effectiveness of the warnings issued on an ex-post basis, for instance, by assessing the ratio of warnings that were followed by a transaction to the total of all warnings issued, and should make adjustments to their relevant policies and procedures where necessary.

Q11: Do you agree with the suggested approach on the qualifications of firm staff? Please also state the reasons for your answer.

Yes we do.

Q12: Do you agree with the suggested approach on record-keeping? Please also state the reasons for your answer.

Yes we do, under the condition of having a limited duration of such record keeping. We would consider a 3 years period as sufficient for such topic, keeping in mind that IT consumption has quite high impact in terms of climate change.

Q13: Do you see any specific difficulties attached to the requirement to keep records of any warnings issued and any corresponding transactions made by clients?

We do not quite understand the meaning of this question.

Q14: Do you agree with the suggested approach on determining situations where the appropriateness assessment is needed? Please also state the reasons for your answer.

Yes, we agree.

Q15: Do you agree with the suggested approach on controls? Please also state the reasons for your answer.

Yes, we agree.

Q16: When providing non-advised services, should a firm also assess the client's knowledge and experience with respect to the envisaged investment product's sustainability factors and risks? If so, how should such sustainability factors and risks be taken into account in the appropriateness assessment? Please also state the reasons for your answer.

We consider that there is no need for specific provisions in relation to those risks in the field of appropriateness assessment. Investment risk is, in fact, the central point of the appropriateness test, but we see sustainability risk as one among others that has not to be taken in isolation.

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