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ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Prot. N. 150/12

Response to the Consultation Paper concerning ESMA Guidelines on certain aspects of the MiFID suitability requirements

Assogestioni, the Italian association of asset management companies, welcomes the opportunity to comment on the Consultation Paper regarding *"Guidelines on certain aspects of the MiFID suitability requirements"*. We appreciate the proposition to enhance clarity and foster convergence in the implementation of the MiFID suitability requirements. This will help investment firms to improve their implementation of the MiFID requirements on suitability, which have a very important role in investor protection.

In general, we agree with the contents of these Guidelines, but somewhere we deem that the aim of investor protection could be better balanced with the necessity of keeping the costs low. To reach this purpose, we report below the answers to your questions which may be more critical.

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.

We agree with ESMA that investment firms should provide their clients with information about the suitability assessment process. Such information is useful to encourage clients to provide accurate and sufficient information about their experience, knowledge and financial situation.

However, information should not include *"how a risk profile is established"*, we deem sufficient to inform clients about *which* risk profile is established. In our opinion, information on *"how"* a risk profile is established could be too technical and non-comprehensive for the client.

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.

We agree with ESMA on the importance of the use of the proportionality principle to determine the extent of information to be collected.

As part of this, the Guidelines require investment firms to collect more in-depth information about the client when providing access to complex or risky financial instruments. In this context ESMA should also clarify (with an example) that, when investment firm provide access to simplex or less risky financial instruments, investment firms should be allowed to collect less in-depth information. So, the proportionality principle works in a double direction.

Along the same line, we deem that where an investment firm does not obtain sufficient information about the client, it should have the possibility to provide an investment service suited to the level of details collected about the client (this principle is already expressed in Assogestioni Guideline n. 7 on suitability assessment, validated by CONSOB, 03/24/2009).

Furthermore, we deem opportune that where the investment firm has other relationship with a client and consequently is in possession of information about that client, it could base the suitability assessment on this information, provided that information is up-to-date (also this principle is already expressed in Assogestioni Guideline n. 7 on suitability assessment, validated by CONSOB, 03/24/2009).

Do you agree that investment firms should take reasonable steps to ensure that information collected about clients is reliable and consistent? Please also state the reasons for your answer.

We agree that investment firm should take reasonable steps to ensure that the information collected about the client is reliable and consistent. However, as explained in article 37(3) of MiFID 2006/73/CE, "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 information is manifestly out of date, inaccurate or incomplete".

ESMA, therefore, should state in the guidelines that an investment firm cannot be held responsible if the client provides out of date, inaccurate or incomplete information.

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.



We agree with ESMA that, in case of legal entities or groups, the investment firm and the client should agree on how to determine the relevant client information. However, we deem too cautious the approach proposed by ESMA of basing the suitability assessment on the person belonging to the group who has the lowest level of knowledge and experience. A cautious approach such as this does not seem justified, where the person belonging to the group, who has more experience and knowledge, ensures that he or she will have the main role in investment decisions.

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.

We deem excessive to the investment firm to take into account the indirect costs to the client which could arise from the investments.

General Director