

## **Consultation paper on Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements**

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#### **1.- Target participants**

This paper is primarily of interest to competent authorities and investment firms that are subject to Directive 2014/65/EU (MiFID II). In particular, the consultation paper is addressed to: (1) investment firms and credit institutions providing investment services and activities; (2) investment firms and credit institutions when selling structured deposits; and (3) external Alternative Investment Fund Managers (AIFMs) when providing investment services. This consultation paper is also relevant for consumer groups, investors and trade associations.

#### **2. - Information Note**

The MiFID II appropriateness and execution-only framework is an important element of investor protection in the case of the provision of services other than investment advice or discretionary portfolio management.

It requires investment firms to ask clients for information on their knowledge and experience in respect of the type of product or investment service offered or requested, in order to assess whether the product or service is appropriate for the client concerned. Where the firm considers that the client does not have the appropriate knowledge and experience to understand the risks of the product or service concerned, a warning in this regard must be issued to the client. A warning is also required when clients do not provide the necessary information on their knowledge and experience or if such information is insufficient.

If certain conditions are met, the firm may provide services without advice related to non-complex products without an appropriateness assessment (execution-only regime). In such case, the client must be warned that the appropriateness assessment is not required, and therefore, the client does not benefit from the corresponding protection.

The aim of the draft Guidelines is to enhance clarity and foster convergence in the application of certain aspects of the appropriateness and execution-only requirements. To this end, the paper builds on relevant parts from ESMA's Guidelines on certain aspects of the MiFID II suitability assessment requirements, and takes into account the results of supervisory activities conducted by national competent authorities on the application of these requirements, in particular, those resulting from the 2019 common supervisory action on appropriateness, coordinated by ESMA, in which 24 national competent authorities participated. The results of this common supervisory action showed that there was insufficient convergence in the understanding and application of several areas of the requirements by firms in different Member States, and often

within Member States themselves. Therefore, ESMA decided to develop these Guidelines.

While the level of investor protection afforded by the suitability assessment is higher compared to the appropriateness assessment and the execution-only exemption, they do share some aspects. This is the case of the collection of information about the client's experience and knowledge and assessment thereof in respect of the product or service concerned.

Therefore, in the development of the draft Guidelines, the Guidelines on certain aspects of the MiFID II suitability assessment requirements have been used as a starting point. Thus, guidelines on aspects such as 'know your client' and 'know your product' that are relevant for both the appropriateness and suitability assessments were adjusted to the appropriateness regime. Conversely, certain guidelines that were not relevant for the appropriateness assessment were deleted, while others have been added.

Specifically, 13 guidelines have been proposed:

Guideline 1 – Information to clients about the purpose of the appropriateness assessment

Guideline 2 – Arrangements necessary to understand or warn clients

Guideline 3 – Extent of information to be gathered from clients (proportionality)

Guideline 4 – Reliability of client information

Guideline 5 – Relying on up-to-date client information

Guideline 6 – Client information for legal entities or groups

Guideline 7 – Arrangements necessary to understand investment products

Guideline 8 – Arrangements necessary to assess the appropriateness of an investment or else issue a meaningful warning

Guideline 9 – Effectiveness of warnings

Guideline 10 – Qualifications of firm staff

Guideline 11 – Record-keeping

Guideline 12 – Determining situations where the appropriateness assessment is required

Guideline 13 – Controls

The Paper includes some practical examples deemed relevant and a question on whether sustainability risk and factors should be taken into account in the appropriateness assessment (and if so, how), since the European Commission has proposed their integration into the product governance and suitability requirements.

ESMA expects to publish a final report and final Guidelines in Q3 2021.

### **3.- Submission of comments**

The deadline for submitting comments is **29 April 2021**.

Respondents may send their comments through ESMA's website: [www.esma.europa.eu](http://www.esma.europa.eu). Both the paper of this consultation and the response form

are available in the section [\*\*\*Consultations\*\*\*](#) (place the cursor on the word to obtain the link).

Likewise, please send a copy of your answers to the CNMV to the following email address: [\*\*documentosinternacional@cnmv.es\*\*](mailto:documentosinternacional@cnmv.es)

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