ESMA PUBLISHES THE CONCLUSIONS OF THE SUPERVISORY ACTION ON THE INTEGRATION OF SUSTAINABILITY PREFERENCES IN SUITABILITY AND PRODUCT GOVERNANCE

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On 6 May, the European Securities and Markets Authority (ESMA) published a Statement reporting the results of the Common Supervisory Action (CSA) carried out between the second half of 2024 and 2025, regarding compliance with the obligations to incorporate sustainability preferences into suitability assessment and sustainability factors into product governance. The Spanish National Securities Market Commission (CNMV) participated in this supervisory action conducted during the 2024-2025 period.

In the Statement, ESMA reaffirms the importance it places on sustainable finance and on the effective integration of sustainability considerations in the provision of investment services. The document also acknowledges the complexity of the current legal framework and the resulting challenges for firms and clients alike.

Moreover, in the context of the ongoing legislative developments relating to the Retail Investment Strategy (RIS) and the review of the Sustainable Finance Disclosure Regulation (SFDR), ESMA considers it essential to guarantee that sustainability-related requirements are maintained and applied effectively and proportionately, that simplicity for clients is promoted, and that firms are supported in providing high-quality, accessible investment services. Accordingly, the European supervisory authority encourages National Competent Authorities (NCAs) to adopt a proportionate supervisory approach during this transitional period by fostering dialogue with firms to address identified issues rather than prioritising enforcement actions, without prejudice to cases involving clear breaches or mis-selling.

The CNMV will continue to monitor the implementation of sustainability-related obligations under MiFID II through a proportionate approach, promoting simplification and the reduction of the administrative burden on firms and clients while ensuring a satisfactory level of compliance with current legislation.

With regard to the CSA results, ESMA explains that, overall, firms have continued to make progress in integrating the MiFID II sustainability requirements into their suitability and product governance processes. However, it also confirms that practices remain uneven across firms and jurisdictions, and that further improvements are needed in several areas.

The CSA's key findings are as follows:

- Although firms have implemented at least some measures to help clients understand the new terms and concepts, many have reported difficulties in explaining them in a way that is easily understandable for clients.

- There is a noticeable trend towards more detailed and specific questionnaires compared to the initial implementation phase of the legal requirements. Nevertheless, ESMA encourages firms to further reinforce their processes to ensure

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that clients' sustainability preferences are collected in a clear, neutral and sufficiently detailed manner in the suitability questionnaires.

- Firms have adopted policies and procedures for mapping the ESG characteristics of financial instruments, yet they are encouraged to continue reviewing the consistency of their product categorisation processes as the availability and quality of ESG data evolve. Further reforms to the SFDR and the RIS are expected to streamline this process and enhance transparency for end investors, thereby ensuring informed investment decisions consistent with their preferences.

- Some limitations were observed in the mechanisms and procedures that firms have put in place to integrate clients' sustainability preferences into suitability assessments. These include difficulties in addressing clients' preferences due to a limited product offering in certain sustainability categories, a reduced level of granularity in questionnaires, or the application of low minimum thresholds for sustainable investments. In such circumstances, ESMA suggests that firms could proactively present clients with products that most closely align with their expressed preferences, provided that the advisory process remains clear, fair and not misleading. Furthermore, ESMA believes that transparent communication regarding the proximity of available products to clients' initial expectations could facilitate informed decision-making and contribute to a smoother advisory process, pending forthcoming legislative clarifications.

- Not all firms have implemented sufficient measures to ensure that records are complete and detailed enough, particularly with regard to adapting sustainability preferences and the rationale behind these changes. ESMA encourages firms to ensure that all documentation relating to clients' sustainability preferences and the matching process between these preferences and the products recommended or invested in on their behalf, as well as any adaptations to initial sustainable preferences, is sufficiently complete, clear and traceable.

- Most firms have developed mechanisms to specify the sustainability-related objectives when identifying the target market for a product. These descriptions are generally based on the regulatory definition of sustainability preferences set out in Article 2(7) of the MiFID II Delegated Regulation. However, some firms define these objectives with insufficient granularity, while others have not yet fully developed their processes. ESMA encourages firms to continue refining the way in which they define sustainability-related product objectives over time, in order to facilitate a meaningful and accurate match with clients' sustainability preferences.

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