



ASOCIACIÓN ESPAÑOLA DE BANCA

SPANISH BANKING ASSOCIATION RESPONSE TO THE ESMA CONSULTATION ON CERTAIN ASPECTS OF THE MiFID II SUITABILITY REQUIREMENTS

The Spanish Banking Association wants to endorse the European Banking Federation response to the above-mentioned consultation. However, we want to emphasize the following aspects especially important for the Spanish industry.

1.- The consultation document contains some details which do not seem to be designed for banks. In this regard, banks need some level of standardization in their suitability models. Suitability questionnaire should be used for different types of products, with different complexity and different risks. The client profile should be defined without the need of one different questionnaire for each type of product.

The need of different questionnaires for different products should become a bad experience for clients who should answer the same questions over and over. This would be also useless for employees responsible for the investment services.

This should be avoided with the use of standardized questionnaires with enough level of detail to define suitable products for the client

2.- A portfolio approach is needed where different products are aloud (always according to a correct diversification). The consultation document notes the concentration risk and allows the portfolio approach for the suitability test in some cases, but in other ones it only deals with product by product evaluation.

For example, with regard parr. 71: *The more complex a product, the more detailed the information firms will have to collect with regard to the knowledge, experience, financial situation and investment objectives of the client*, this kind of considerations do not seem to be applicable to a portfolio approach, but only to a product by product analysis.

Is important to note that in the portfolio approach the risk to be considered is not the product risks ("risks involved in the related transaction"). The risk to be considered is the risk of the portfolio as a whole. The diversification concept reflected in parr 82 is not enough.

The level of knowledge and experience of the client, in advised services, is reasonable that relates to each product, as the client must make a decision (no in portfolio management), but risks, financial situation and investment objectives should be analysed as a "package", always considering the correct diversification.

3.- Parr 66 and parr. 67 in the Guidelines, refers to the situation where two or more natural persons "have difficulties" in deciding the person from whom the information on knowledge and experience or financial situation should be considered.

This situation was also included in ESMA 2012 Guidelines on suitability requirements (parr. 55)

"Where there is no agreement and where the financial situations of the persons belonging to the group differ, the firm should consider the most relevant person in this respect (i.e. the person with the weakest financial situation). The same should be done when considering their investment



objectives (i.e. the person with the most conservative investment objectives), or their experience and knowledge (i.e. the person authorised to carry out transactions with the least experience and knowledge)."

This approach referring to the "no agreement" is preferred as the concept of "difficulties" is not clear and can rise problems for the entities and parties involved.

4.- According to the consultation document, parr. 92. *Firms should have adequate policies and procedures in place to ensure that an analysis of the costs and benefits of a switch is undertaken such that firms are reasonably able to demonstrate that the expected benefits of switching are greater than the costs. Firms should also establish appropriate and proportionate controls to avoid any circumvention of the relevant MiFID II requirements (...) 94.- When providing investment advice, a clear explanation of the reasons why the benefits of the recommended switch are greater than its costs should be included in the suitability report the firm has to provide to the client before the transaction is made.*

This information requirement does not appear in the cost and charges information requirements defined in Delegated Regulation 2017/565.

Cost and charges information requirements are regulated in detail in MIFID Directive and in art 50 in Delegated Regulation 2017/565. This article 50 regulates the obligation of providing the clients *with an illustration showing the cumulative effect of costs on return when providing investment services* and no additional information requirements should be imposed in the guidelines.