ESMA - European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Per online submission filed on 13 October 2017

On 13 July 2017, this Authority published a paper setting out for public consultation "Guidelines on certain aspects of the MIFID II suitability requirements". The present Association intends to submit a number of considerations with reference to the aforesaid Consultation Paper.

I. The Italian Association of Private Banking ("Associazione Italiana Private Banking" or AIPB[1])

Our non profit professional Association, established in 2004 by private banking operators in Italy, represents a place for aggregation, sharing and development of private banking business culture in order to support the enhancement of quality regarding services offered to clients within this sector.

Private Banking is an activity which has developed over the years within the financial markets and that has now reached its own operational independence within the private saving sector.

Such activity is characterised by a level of service tailored to the needs of a selected client base, particular attention for clients' assets with a broader approach than that applied to investment portfolios and a close interrelation between the private banker and the client.

As far as concerns legislative developments, our Association considers the implementation of initiatives aiming at an effective client protection as its priority objective, being at the same

[1] AIPB represents the interests of the private banking operators in Italy, that manage assets around EUR 780 billions (as per 30 June 2017). Its members own financial advisors networks with an high-level portfolio's mean size (EUR 97 millions) and low number of clients per advisor (only 74 on avarage).

AIPB – Via San Nicolao, 10 – 20123 Milano – Tel. +39 02 45 38 17 00 – Fax. +39 02 700 525 766 – info@aipb.it – www.aipb.it – P.I. e C.F. 04455280968

time a precondition for maintaining a high level of confidence in the financial industry and the correct functioning of financial markets.

In answering to this consultation the aim of AIPB is to underline the specific nature of Italian Private Banking sector expressing opinions based on analysis and researches focused on themes of principal concern.

In view of this, our Association wishes to express its satisfaction for the work realized by this honourable Authority, after the introduction of MiFID II framework, in the updating of its Opinions concerning some aspects of suitability requirements. In particular, it was perceived and appreciated the endeavour made by the Authority in its guidelines in an effort to create a steady connection between the suitability discipline - concerning investment advice and portfolio management services - and the new framework of product governance, looking at them in a global perspective.

However this Association is going to make some considerations aiming at the introduction of a principle of proportionality in the application of the guidelines subjected to consultation. The implementation of this principle would be a recognition of the high level and excellent quality of services provided to clients by Private Banking activity.

Consequently our Association suggestion for this honourable Authority is to specify that the application of the cited guidelines should be adapted, case by case, having regard to the features of the provided service. The application of the guidelines should follow a principle of proportionality in order to enhance the specific service provided to clients. This need is particularly evident in Private Banking, in which key attributes are the high quality of the service rendered and the significant level of professionalism.

II. GENERAL GUIDELINE 3

As reported in Consultation Paper, in General guideline 3, in order to correctly implement the principle of proportionality, investment firms should determine the extent of the information to be collected from clients depending on: the features of the service to be provided (investment advice or portfolio management), the type and characteristics of the investment products and the characteristics of the clients.

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In particular, in the same way of General guideline of 2012, supporting guidelines n. 36 states that: "*in determining the information to be collected, firms should also take into account the nature of the service to be provided. Practically, this means that:*

(a) when investment advice is to be provided, firms should collect sufficient information in order to be able to assess the ability of the client to understand the risks and nature of each of the financial instruments that the firm envisages recommending to that client;

(b) when portfolio management is to be provided, as investment decisions are to be made by the firm on behalf of the client, the level of knowledge and experience needed by the client with regard to all the financial instruments that can potentially make up the portfolio may be less detailed than the level that the client should have when an investment advice service is to be provided. Nevertheless, even in such situations, the client should at least understand the overall risks of the portfolio and possess a general understanding of the risks linked to each type of financial instrument that can be included in the portfolio. Firms should gain a very clear understanding and knowledge of the investment profile of the client".

Consultation Paper claims that, when investment firms are providing the investment advice service, the information collected from clients should be more detailed than in the case of provision of the portfolio management service.

The different level of information required in the provision of one of the services above mentioned is due to the specific features of each service.

On one hand, portfolio management is a type of service through which the client delegates a professional manager to administrate his portfolio composed by financial products and amounts of money, following a predefined investment strategy.

On the other hand, investment advice service consists in providing personal recommendations on financial transactions related to a specific financial instrument. These recommendations are given to clients when they personally require them or at the independent initiative of investment firms.

When portfolio management service is to be provided, investment firms could autonomously adopt decisions on investment transactions, in fact, in this kind of service, there's no need to obtain client's consensus in day to day investment activities.

In the view of the above, one might assume that, in portfolio management service, the absence of client's autonomy in investment decisions combined with the high professionalism of investment managers could have led ESMA to reduce the level of information that firms should collect on knowledge and experience of clients when providing this service.

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However it appears to be inconsistent with the purpose of MiFID I and MiFID II the decision of ESMA to make a distinction between investment advice and portfolio management in relation to the level of information collected about the clients. In MiFID I and MiFID II, taking account of their specific features and differences, the two services are regarded as equivalent and consequently they are subjected to the same discipline (in this respect see i. e. information to be collected form clients and suitability regime in investments and recommendations whit regard to clients profile).

Since the introduction of MiFID framework, the European legislator had pointed out that clients investment decisions are significantly led by investment firms recommendations, in fact clients hardly depart from them.

In MiFID I the awareness about investors reluctance to disregard investment firms recommendations is taken into account in Recital 3, in which is highlighted the opportunity of including investment advice among the investment services requiring authorization "*due to the increasing dependence of investors on personal recommendations*".

The same approach is adopted in MiFID II by Recital 70 (in which Recital 3 of MiFID I is recalled) where it is again underlined "*the continuous relevance of personal recommendations for clients*".

In the light of the above, in term of required level of information on knowledge and experience to be collected from clients, the investment advice service shouldn't be too dissimilar from portfolio management. Consequently, ESMA interpretation on the need, for investment firms, for a low level of information, when providing portfolio management, should also be applied in case of provision of investment advice service. This is confirmed by the circumstance that the high level of knowledge and experience that characterises the investment manager is the same of the investment advisor and may compensate the clients low level of knowledge and experience.

Such an interpretation appears even more consistent with the specific features of Private Banking, through which is provided a high customized investment advice service, characterized by a relevant degree of professionalism. As a result the level of information about clients knowledge and experience required for the provision of investment advice service should be the same necessary when performing portfolio management service.

Through the above mentioned services investors may avail themselves of the high skills and expertise of investment firms and this is particularly evident in Private Banking.

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Private Bankers offer a high customized service thanks to investment solutions well tailored on clients profile, taking care of their expressed needs and objectives.

The high quality of the investment advice service performed by a Private Bankers allow clients to benefit from his relevant degree of knowledge and experience. So, Private Banking is able to compensate any possible gaps or deficiencies in clients knowledge and experience on financial matters. In Private Banking, thorough the performance of an investment advice service structured with investments and disinvestment recommendations tailored on clients profiles and objectives, investors may obtain the same results they could reach by making use of portfolio management service.

We hope the Authority therefore will take into consideration the possibility to modify supporting guidelines n. 36 by specifying that in investment advice and portfolio management services, thanks to their peculiar features, the level of information to be collected from clients on knowledge and experience could be less detailed due to the high quality of the service provided.

III. GENERAL GUIDELINE 4

As reported in Consultation Paper, General guideline 4, the Authority states that investment firms should take reasonable steps and have appropriate tools to ensure that the information collected about their clients is reliable and consistent.

Especially, Consultation Paper *supporting guidelines* n. 44 provides that *"Self-assessment should be counterbalanced by objective criteria. For example:*

a) instead of asking whether a client understands the notions of risk-return trade off and risk diversification, the firm could present some practical examples of situations that may occur in practice, for example by means of graphs or through positive and negative scenarios, asking to choose which one would be correct/real in his opinion;

b) instead of asking a client whether he feels sufficiently experienced to invest in certain products, the firm could ask the client what types of products the client is familiar with and how recent and frequent his trading experience with them is;

c) instead of asking whether clients believe they have sufficient funds to invest, the firm could ask for factual information about the client's financial situation;

d) instead of asking whether a client feels comfortable with taking risk, the firm could ask what level of loss over a given time period the client would be willing to accept, either on the individual investment or on the overall portfolio.

When assessing the risk tolerance of their clients through a questionnaire, firms should not only investigate the desirable risk-return characteristics of future investments but they should also take into account the client's risk perception. To this end, whilst self- assessment for the risk tolerance should be avoided, explicit questions on the clients' personal choices in case of risk uncertainty could be presented. Furthermore, firms could for example make use of graphs, specific percentages or concrete figures when asking the client how he would react when the value of his portfolio decreases".

Consultation Paper suggests the investment firms to implement MiFID questionnaire with graphics, illustrations of positive and negative scenarios which might be encountered, specific percentages and concrete figures with a view to making the clients more confident with his investor profile.

Such an impressive implementation could however represent an excessive burden on investment firms because they ought to adopt appropriate instruments to correctly represent all the various circumstances that might involve a vast range of clients, regardless of the service provided.

The questionnaire extent by the addition of the above mentioned tools represents another critical aspect, in fact, a massive questionnaire could disincentives clients from giving a great number of information about their profile, while they could be more encouraged to compile a lean questionnaire supported by simple and essential questions, graphics and illustrations.

The outlined approach does not appear to be particularly commendable in Private Banking because private bankers set a relationship founded on mutual trust with clients and offer a high customized service which make them able to deeply understand clients objectives, without the need to be supported by accessory tools.

We hope the Authority therefore will take into consideration the possibility to modify supporting guidelines n. 44 specifying that, even collecting complete, consistent and reliable information from clients, investment firms should make use of the suggested accessory tools having regard of the quality level of the service provided.

* * *

Yours sincerely,

Fabio Innocenzi
President

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