ESMA - European Securities and Markets Authority
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Subject: Participation to the public consultation with reference to the document "*Call for evidence – Impact of the inducements and costs and charges disclosure requirements under MiFID II*"

As regards the proceedings of public consultation under reference, AIPB, the Italian Private Banking Association, refers to this Authority the following considerations in order to illustrate to the best of its knowledge the impact of the new regulations in terms of the inducements and costs and charges introduced by MiFID II on the intermediaries, as well as the choices undertaken by the intermediaries with reference to the disclosure requirements of said information to their clients, hoping that these comments could positively contribute to the best possible interpretation and eventual amendment of the regulation.

All interested respondents were invited, under question M, to express their views on the eventual need for more detailed rules governing the timing, format and presentation of ex-ante and ex-post disclosure of costs and charges.

The main objective of the framework regulating costs and charges disclosure set forth under MiFID II is to ensure to the clients an increased transparency and comparability of the financial conditions. An increased standardisation, especially with regard to the mechanisms allowing the aggregation of data and the calculation methodologies to be used, could contribute to the achievement of the aforementioned objectives in the best interest of the client.

At present, the absence of univocal guidelines on the matter has, indeed, left a wide margin of discretion to the intermediaries during the phases of implementing internal procedures and developing complex technological support infrastructure, having as

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consequence that the different choices made by the intermediaries could determine a lesser level of uniformity of the data disclosed to the clients.

In view of the above, guidelines are the most suitable instruments for introducing eventual framework disclosures on the topic, since, on one hand, they would ensure a preliminary confrontation with the market through public consultations (unlike what occurs when Q&A's are directly published) and, on the other hand, it would provide the intermediaries with the time needed to update the procedures that have been implemented so far, provided that they are not compliant to the new indications.

The experience that the operators have gained so far with transparency due to the disclosure of ex-ante costs and charges has highlighted the difficulty in aggregating the costs linked to services which are not directly related to specific operations with financial instruments. There are cases in which intermediaries charge directly the client with the commission fees for the services provided, as it is the case with securities deposit or financial consulting, whose pricing is flat and proportionate to the size of the client's portfolio but, at the same time, such pricing does not appear to be in relation with or dependent on the single financial instrument. In such hypotheses the aggregated value creates a distortive process in terms of representation to the client. In fact, in the case of an ex-ante disclosure, it is not easy to foresee how many operations will be executed in a reference period and, in any case, dividing said value by the number of operations, apart from it being arbitrary, leads to a distorted disclosure to the end client, given that the value of the service provided (*i.e.* advisory services) does not depend on the number of the advices provided.

Therefore, in this respect, the appropriate regulatory review process would be one that states in a clear manner that an ex-ante disclosure could not aggregate costs and charges which are not depending on the single operation and that also considers sufficient that the same costs and charges would be represented on one-off basis "*ab initio*".

Under question K, respondents were asked if, for the purpose of costs and charges disclosures under MiFID II, they relied on PRIIPS/KID and/or UCITS KIIDs; the respondents were also asked if, in their opinion, more possible synergies between the MiFID II regime and PRIIPS KID and UCITS KIID regimes were possible.

To this regard, the Association defends the opinion that the use made so far of KID/KIID with the purpose of fulfilling the costs and charges disclosure requirements does not seem to have demonstrated positive outcomes.

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In fact, specifically, there is an evident misalignment between the information contained in KID/KIID and the information that the intermediaries are required to disclose to their clients under the ex-ante costs and charges disclosure requirements set forth in MiFID II.

Due to such discrepancies, the intermediaries – apart from delivering KID/KIID – have opted to draft an additional document which discloses (also) the same data stated in KID/KIID.

The result of such practice is a certain overlapping and duplication of information which, in practice, could even be misleading for the clients, also because, during the processing and transferring of the data from KID to the ex-ante costs disclosure, difficulties and misalignments might occur.

Therefore, the partial synergy between the frameworks, instead of providing higher efficiency, has only created substantial operational issues for the intermediaries.

To this regard, in order to be able to have an effective benefit from KIDs, also for the purposes of costs and charges disclosures under MiFID II, it would be desirable that those documents already contained all the information relating to the product that the intermediary is already required to disclose to the client, and that their delivery would already be sufficient to fulfil all disclosure requirements in relation to financial instruments under MiFID II, installing a complete synergy between the regulatory frameworks. If there are data also to be disclosed under MiFID II, the PRIIPs Regulation should be revised integrating therein the aforementioned data.

Doing so, the distributor would have to communicate to the client (if that were the case) before executing the transaction only the costs of the service linked to that specific operation, avoiding to duplicate any information already provided in the KID.

Under question P, respondents were asked if further clarification should be provided in relation to ex-ante costs and charges disclosures for telephone trading.

To this regard, it should be noted that transactions carried out by telephone are mostly done, in practice, by those subjects showing less familiarity with IT devices, therefore considering the telephone as an alternative instrument.

All above stated, it would be desirable to deem sufficient, for the purposes of ex-ante costs and charges disclosure requirements, keeping the recording of the telephone call in which all disclosures under the framework reference have been described to the client.

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Esma has already disclosed its own interpretation on the topic in the updated Q&As of May 29th 2019 on investor protection and intermediaries (see Q&A No. 28 on costs and charges).

To this end, this Association would like to point out that the ESMA guidance could lead, in fact, to a poor viability of this communication system, especially when the subjects of the operation are cost-bearing instruments.

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Best regards,
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