

1st March 2023

Mr. John Berrigan
Director General for Financial
Stability, Financial Services and
Capital Markets
European Commission
Brussels

Dear Mr. Berrigan,

we are writing with regard to the European Commission's initiative on the Retail Investment Strategy and, in particular, the revision of the MiFID inducement framework, which could have potential negative effects for the development of the European Capital Market as well as a deterioration in the quality of the services offered to retail investors.

Regulatory actions aimed at imposing a unique distribution and remuneration model are not justified, appear counterproductive and, therefore, should be avoided. Conversely, confirming the coexistence of both commission-based and fee-based advisory models appears to be the preferable choice, leaving flexibility to investors in choosing the most suitable and affordable type of advisory service.

We believe that a combination of regulatory actions that promote more transparency and financial education and strengthen the current requirements to be met by investment firms to receive inducements would undoubtedly offer retail investors more tangible benefits.

Along this line, we bring to your attention the attached proposals which we believe may enhance the existing investor protection framework, without resorting to any drastic measure.

Hoping that the European Commission would take them into consideration in drafting its forthcoming legislative proposal, we remain available for any further information or clarification you may require.

Best regards.

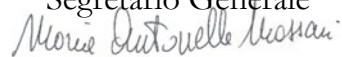
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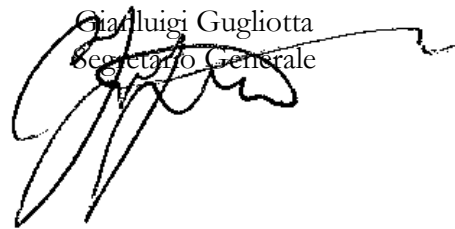
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Encl.

**PROPOSALS AIMED AT STRENGTHENING THE EUROPEAN REGULATION
ON INDUCEMENTS (THIRD PARTY PAYMENTS)**

A. Reaching a uniform regulation at European level on inducements in the distribution of financial products, including insurance investment products, through two delegated regulations with identical wording (to reduce the room for manoeuvre currently granted to Member States by the Delegated Directive), as well as delegating to ESMA and EIOPA the adoption of Guidelines (so as to ensure a homogeneous application of the discipline by the Member States).

B. Strengthening the regulatory requirement for enhancing the quality of the relevant service.

In order to enhance the quality of the additional services that must be provided to justify the inducements, the following changes to the current regulatory framework could be envisaged, combined with the incorporation into the Recitals of the future Regulations of the clarifications provided by ESMA in Q&A no. 8 on inducements of 31 March 2021:

1. Strengthening the quality of additional services and requiring investment firms to adopt at least one of the combinations reworded in letter a, paragraph 2, art. 11 (see below);

2. Declining proportionality in qualitative and/or quantitative terms.

In order to ensure a more effective application of the principle, it could be established in the legislation that the value of additional services offered to clients should be proportionate to the level of inducements received by investment firms.

The definition of qualitative and/or quantitative assessment methodologies should be left to investment firms and described in the "inducement policy" (see following point);

3. Requiring investment firms to adopt an "inducements policy" in which to explain the criteria for managing conflicts of interest related to inducements, the additional services provided against the inducements received and the qualitative and/or quantitative criteria used by the investment firm to assess the proportionality with respect to the total level of inducements received.

C. Strengthening pre-contractual and periodic disclosure

Investment firms could be required before the establishment of the contractual relationship to inform the client more clearly about:

- ✓ the meaning of inducements in terms of remuneration, explaining their characteristics and mechanism and referring to the "inducement policy";
- ✓ the type of services (advised and not-advised) provided to the client on the basis of this remuneration and its content.

This information should be provided primarily at a pre-contractual level. Furthermore, in line with ESMA's suggestions, it is proposed to make the updated list of services that improve quality available during the whole relationship with the client.

D. Strengthening the clarity and comprehensiveness of disclosure on inducements

Disclosure on inducements prior to individual transactions could be made clearer and more comprehensible, even in a standardized way, providing a simple and immediate explanation of how inducements work.

PROPOSED CHANGES

Article 11 (Delegated Directive (EU) 2017/593)

Inducements

1. Member States shall require investment firms paying or being paid any fee or commission or providing or being provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to the client to ensure that all the conditions set out in Article 24(9) of Directive 014/65/EU and requirements set out in paragraphs 2-5 are met at all times.

2. A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

(a) it is justified by the provision of an additional or higher level service to the relevant client, **whose value is proportional to the level of inducements received from the investment firm. To that end, the investment firm must offer the client other than the clients who are considered to be professional at least one of the following services,** such as:

(i) the provision of non-independent investment advice, **together with the provision of educational material or services aimed at increasing the client's financial knowledge**, on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;

(ii) the provision of non-independent investment advice, **together with the provision of educational material or services aimed at increasing the client's financial knowledge**, combined with either: ~~at least two of the following services~~ a) an offer to the client, at east on an **half yearly annual** basis, to assess the continuing suitability of the financial instruments in which the client has invested; **b) investment advice with a portfolio approach; c) or with another on-going service that is likely to be of value to the client such as** advice about the suggested optimal asset allocation of the client; ~~or~~

(iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the **provision of educational material or services aimed at increasing the client's financial knowledge, combined with at least two of the following services:** **a) the provision of the suitability assessment of the transactions in financial instruments that the customer intends to carry out; b) the provision of added value tools,** such as objective information tools helping the relevant client to take investment decisions; **c) the provision of objective information tools** ~~or~~ enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, ~~or providing periodic reports of the performance and costs and charges associated with the financial instruments.~~

Without prejudice to the possibility for the investment firm to offer one or more additional services with respect to one or more services of those listed above;

(b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;

(c) it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

3. Investment firms shall fulfil the requirements set out in paragraph 2 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

3a. Investment firms shall develop, implement and maintain an effective inducement policy set out in writing which defines at least: a) the conflicts of interest to which the inducements may give rise and the criteria to ensure that such conflicts do not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of the client, also considering the possibility of offering products issued or provided by the investment firm itself or by entities having close links with the investment firm; b) an indication of the additional or higher level services provided on the basis of the incentives and aimed at enhancing the quality of the services provided; c) the qualitative and/or quantitative criteria with which the proportionality of the additional or higher level services is assessed with respect to the level of inducements received.

4. Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

(a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and

(b) by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

5. In relation to any payment or benefit received from or paid to third parties, investment firms shall disclose to the client the following information:

(a) prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article 24(9) of Directive 2014/65/EU. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;

(b) where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and

(c) at least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

In implementing these requirements, investment firms shall take into account the rules on costs and charges set out in Article 24(4)(c) of Directive 2014/65/EU and in Article 50 of Commission Delegated Regulation (EU) 2017/565 (1).

During the provision of services to the client, investment firms shall make available on request to the client the updated list of additional or higher level services provided extracted from the inducement policy.

When more firms are involved in a distribution channel, each investment firm providing an investment or ancillary service shall comply with its obligations to make disclosures to its clients.

Article 47 (Delegated Regulation EU 2017/565)

Information about the investment firm and its services for clients and potential clients

1. Investment firms shall provide clients or potential clients with the following general information, where relevant:

(a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;

(c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;

(e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with Article 25(6) of Directive 2014/65/EU;

(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Article 34;

(ha) a description, which may be provided in summary form, of the investment firm's inducement policy adopted in accordance with Article 11, paragraph 3a, of the Delegated directive (EU) 2017/593;

(i) at the request of the client, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions set out Article 3(2) are satisfied.

The information listed in points (a) to (i) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

2. When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

3. Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

- (a) information on the method and frequency of valuation of the financial instruments in the client portfolio;
- (b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;
- (c) a specification of any benchmark against which the performance of the client portfolio will be compared;
- (d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;
- (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

The information listed in points (a) to (e) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.