

Circular: Guidelines on certain aspects of the MiFID II Suitability requirements

Background

The European Securities and Markets Authority (ESMA) has published its [MiFID II Suitability Supervisory Briefing](#) document.

MiFID II and the MiFID II Delegated Regulation place various requirements on firms when providing investment advice or discretionary portfolio management services that do not apply when providing other investment services. Notably, these include requirements to ensure that (when providing advice) any personal recommendations made or (when providing discretionary portfolio management services) any discretionary investment decisions taken on behalf of clients are suitable for each client, as required under Article 25(2) of MiFID II. The assessment of suitability is one of the most important requirements for investor protection in the MiFID II framework.

Scope

The MiFID II Suitability Supervisory Briefing document is meant to give market participants indications of compliant implementation of the MiFID II suitability provisions.

Guidelines on the main aspects of the MiFID II Suitability requirements

The MiFID II Suitability Supervisory Briefing document tackles the following areas:

- *Determining situations where the suitability assessment is required*

In accordance with Article 25(2) of MiFID II, when providing investment advice or discretionary portfolio management services, firms must ensure that the specific transaction to be recommended, or entered into in the course of providing a discretionary portfolio management service, is suitable for the client in question.

- *Information to clients about the purpose of the suitability assessment*

In accordance with Article 54(1) of the MiFID II Delegated Regulation, investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing

the suitability of investment services or financial instruments and shall inform their clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

- *Obtaining information from clients*

In accordance with Article 54 of the MiFID II Delegated Regulation, when providing investment advice or discretionary portfolio management services, firms must obtain the necessary information in order to understand the essential facts about the client so that they can assess whether the specific transaction to be recommended, or entered into during the course of providing a discretionary portfolio management service, is suitable for the client in question.

- *Arrangements necessary to understand investment products*

In accordance with Article 54(9) of the MiFID II Delegated Regulation, investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

- *Arrangements necessary to ensure the suitability of an investment*

In accordance with Article 25(2) of MiFID II, when providing investment advice or discretionary portfolio management services, firms must ensure that the specific transaction to be recommended, or entered into in the course of providing a discretionary portfolio management service, is suitable for the client in question.

- *Suitability report*

In accordance with Article 25(6) of MiFID II, when providing investment advice, firms shall, before the transaction is made, provide retail clients with a statement on suitability (the suitability report) in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client. In addition, where a firm provides portfolio management services or has informed its retail clients that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the investment meets the clients' preferences, objectives and other characteristics.

- *Qualifications of firm staff*

In accordance with General Guideline 11, firms are expected to ensure that staff involved in material aspects of the suitability process have an adequate level of skills, knowledge and expertise.

- *Record-keeping*

In accordance with General Guideline¹², firms should maintain adequate record-keeping arrangements in relation to all material aspects of the suitability process, including information to and from client, information on recommendations made to the client and investment (or disinvestment) decisions taken on behalf of the client, as well as related suitability reports.

Target Audience

The content of this circular is addressed to Investment Firms and Credit Institutions when providing investment advice and portfolio management.

Compliance officers are expected to ensure that the foregoing requirements are being correctly implemented. Compliance officers are also expected to communicate such requirements to all staff members, particularly to those staff members who are providing investment advice and/or portfolio management services.

Contacts

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