

02 February 2022

## Consultation on Guidelines on Certain Aspects of the MiFID II Suitability Requirements Issued by ESMA

### Background

On 27 January 2022, the European Securities and Markets Authority (ESMA) launched a [Consultation on Guidelines on certain aspects of the MIFID II Suitability Requirements](#) which is addressed in particular to investment firms and credit institutions providing investment advice or discretionary portfolio management services.

The purpose of the said Consultation is to update and revise the current guidelines, in particular following amendments to MiFID II relating to sustainability pursuant to [Commission Delegated regulation \(EU\) 2021/1253 of 21 April 2021 amending Delegated Regulation \(EU\) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms](#), which shall be applicable as from 2 August 2022.

Firms are expected to take into consideration sustainability factors of investment products as part of their policies and procedures. The main amendments introduced to the MIFID II Delegated Regulation and reflected in the draft revised Guidelines are:

- (a) **Collection of Information from Clients on Sustainability Preferences:** Firms are required to incorporate the collection and analysis of the necessary information about the client's or potential client's ESG preferences within their suitability policies and procedures, as part of the client's suitability assessment;
- (b) **Assessment of Sustainability Preferences:** Firms are required to integrate client's suitability preferences as a top-up to the suitability assessment, so that, the firm has to first identify a range of suitable products for the client (in accordance with the criteria of knowledge and experience, financial situation and other investment objectives); and then proceed by identifying the products that fulfil the client's sustainability preferences; and
- (c) **Organisational Requirements:** Firms are required to provide relevant staff appropriate training with respect to sustainability. In addition, firms shall ensure that they keep appropriate records of the sustainability preferences of the client (if any) and any updates of these preferences.

At this stage, the availability of financial instruments with sustainability features may be limited and the introduction of these financial instruments in the firm's product scope might be gradual. However, notwithstanding this, the Authority would like to emphasise that as outlined in the Consultation:

*“ESMA considers that where, at the time the information is collected from the client, firms **do not have any financial instruments included in their product range that would meet the client's sustainability preferences**, firms should nevertheless collect all information concerning sustainability preferences. In this situation, the firm should clearly indicate that there are currently no products available that would meet those preferences and the client should be given the possibility to adapt the sustainability preferences. This should be documented in the suitability report.” (emphasis added).*

## Next Steps

The consultation closes on **27 April 2022**. ESMA will consider the responses received to this consultation paper in Q2 2022 and expects to publish a final report and final guidelines in Q3 2022.

We appreciate that any feedback sent to ESMA will also be sent to the Conduct Supervision Investments Team on [csuinvestments@mfsa.mt](mailto:csuinvestments@mfsa.mt).