FINANZ PLANER FORUM

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ESMA European Securities
& Markets Authority

To Whom It May Concern

29. September 2017

Finanzplaner Forum Comment on ESMA 35-43-748
ESMA Consultation Paper on certain aspects of the MiFID II suitability requirements

Finanzplaner Forum is the network of nearly 5,000 certified advisors in Austria, Germany, Luxemburg and Switzerland. Finanzplaner Forum aims also on having discussions and close relation to the competent authorities, be it on a European level or in the respective countries mentioned above. For Finanzplaner Forum as the network of certified financial advisors and financial planners the best suitable advice for clients is key. This is the rationale for Finanzplaner Forum to respectfully submit the following comments.

Finanzplaner Forum very much appreciates the intention of the ESMA consultation paper to set clear guidelines for advice in the client’s best interest which includes suitability as a crucial element. We are deeply convinced that advising clients on the best suitable financial instruments is paramount, keeping in mind the client’s best interest.

Keeping in mind that preparations for the implementation of MiFID II and its national legal implementation are nearly finished with only three months left, we as Finanzplaner Forum as well as large part of the advisor community we have contacted are irritated that new requirements are set up at a rather late stage. To our knowledge software implementation already in place will have to be changed in 2018 to meet the new guidelines.

Notwithstanding these concerns we are very pleased to learn that ESMA is determined to introduce suitability requirements for digital advice (or robo advice) as well. This is a very important first step towards a level playing field between human advice and digital advice.

Please find the comments of Finanzplaner Forum on the consultation paper on the next pages:

Q1: Do you agree with the suggested approach on the information to be provided on the suitability assessment and specifically with the new supporting guidelines on robo-advice? Please also state the reasons for your answer.

We absolutely agree with the intention that information has to be up-to-date, accurate and complete. The integration of Robo advice in this guideline is highly welcomed. What is irritating however is the wording of V.I para 18 that firms should avoid stating or giving the impression that it is the investor who decides on the suitability of a financial instrument. This is absolutely correct in the case of robo advice. In case of face-to-face advice it contradicts the paradigm of MiFID II of an investor making informed investment decisions. Perhaps a clarification that para 18 is directed to robo advice would be helpful.

Q2: Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

Finanzplaner Forum is positive with the suggested guideline. Especially the highlighting of behavioural biases is welcomed. With regard to theses biases it would have been useful to include at least basics of behavioural finance into the criteria for assessing knowledge and competencies of investment advisors (ESMA 2015-1886).

Absolute business as usual for certified financial advisors like EFA® or certified financial planning professionals like CFP® is the requirement laid out in para 26. Here the guideline requires information on personal circumstances like marital status etc. For advisors in retail business this will be a big barrier to overcome as the advice process is in most cases assisted by IT systems. Here again the timing is not very favourable.

We are sceptic that the requirement to assess the risk a client might lose his job is realistic. Is there today any guarantee for not losing the job?

Q3: Do you believe that further guidance is needed to clarify how firms should assess clients' ability to bear losses?

No.

Q4: Do you agree with how the guideline on the topic of 'reliability of client information' has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

In general we agree. There are just two comments we would like to make:
Para 44 asks for objective criteria giving examples. But even in these cases firms will remain dependent on the adequacy and correctness of client's information.

In para 45 it is good to read about risk perception. But for us the next logical step is missing in requiring a scientific valid and reliable tool for assessing client's risk perception, based on the findings of psychology.

Again we have to emphasize the importance of behavioural finance in financial advice. The question remains why this topic had not been included in the criteria for assessing knowledge and competence of investment advisors.

Q5: Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer.

Yes.

Q6: Do you agree with the suggested approach to conduct the suitability assessment for a group of clients, especially where no legal representative is foreseen under applicable national laws? Please also state the reasons for your answer.

No comment.

Q7: Do you agree with the suggested approach on to the arrangements necessary to understand investment products for the purposes of suitability assessment? Please also state the reasons for your answer.

Agreement in general. However we wonder why reliance solely on data providers should be detrimental.

Q8: Do you agree with the additional guidance provided with regard to the arrangements necessary to ensure the suitability of an investment? Please also state the reasons for your answer.

We agree, especially para 85 is seen as very important. What we miss is that para 85 also applies to robo advice. Therefore we suggest that the wording of the first sentence of para 86 be changed into 'Firms providing robo advice should **in addition** adopt …'. This would clarify that the requirements of para 85 have to be followed by robo advisors as well.

Q9: Do you agree with the suggested approach for ensuring that firms assess, while taking into account costs and complexity, whether equivalent products can meet their clients' profile? Please also state the reasons for your answers.

We are not happy with the requirements of this guideline a it seems to be a very high burden for firms with respect to product governance. We would like to mention that the text of MiFID II Directive nowhere mentions an obligation for product governance for distributors. This was introduced on level 2.

Q10: Do you agree with the suggested approach for conducting a cost-benefit analysis of switching investments in the context of portfolio management or investment advice? Please also state the reasons for your answer.

In general we agree. It has to be stated however that all these cost-benefit analyses are just estimations as the future performance of any financial instrument is unknown.

Q11: Do you believe that further guidance would be needed with regard to the skills, knowledge and expertise that should be possessed by staff not directly facing clients, but still involved in other aspects of the suitability assessment? Please also state the reasons for your answer.

As already mentioned further guidance on including basics of behavioural finance would be helpful. We would also appreciate kind of harmonisation of the continuing professional development requirement. E.g. Austria requires 15 hours per year for Advisors, Spain 30 hours per year, and Germany doesn't mention CPD requirements at all, at least by now.

Q12: Do you have any further comment or input on the draft guidelines?

No

Q13: What level of resources (financial and other) would be required to implement and comply with the Guidelines (market researches, organisational, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

In our capacity we cannot judge costs and resources. But we would like to again voice our concern that these draft guideline shave been released almost too late as the industry is by now already in the process of implementing their solutions to meet the requirements of MiFID II legislation.

We do hope that our comments are helpful and would appreciate if they could find due consideration.

Yours sincerely

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