Finance Watch
Making finance serve society

Finance Watch response to the European Securities and Markets Authority Consultation Paper on draft guidelines on certain aspects of the suitability requirements under the Markets in Financial Instruments Directive (MiFID II)

Brussels, 13 October 2017

Finance Watch is an independent non-profit Members' association set up in 2011 to act as a public interest counterweight to the powerful financial lobby. Our mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and citizens. Our Members are civil society organisations and expert individuals, supported by a full-time secretariat.

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We agree to the publication of this response.

First and foremost, Finance Watch thanks the ESMA for consulting publicly about this update of the Suitability requirements Guidelines that were first published in 2012. We believe it is important to review these Guidelines, in view of the relevant market developments in the latest years and especially prior to the entry in force of MiFID II in the Member States by January 2018.

We will address to those questions that are more relevant for our remit and our member associations' interests. In general, we believe that this revision of the Guidelines addresses and clarifies some very important missing spots. In general, the overall Guidelines are balanced and improve protection standards for retail investors.

One area where we believe more attention could be paid is to the **non-financial goals that most retail investors have**. In the distribution of financial products at retail level, retail investors usually have a "passive" role while the distribution staff should present the products that best fit their needs. Retail investors tend to be more long-term investors since they save for long-term needs such as housing, retirement, children's education. Therefore, they may also wish to consider long-term factors such as sustainability in their investment decisions.

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The development of green finance and sustainable financial products should go hand in hand with a renewed approach to selling practices. These products would more easily penetrate in the retail segment if they are actively marketed, and may also serve the investment goals of clients as outlined above.

In light of this, and in this area, Finance Watch lend our support to the approach proposed by the 2 degrees initiative in their response to question 2 of this consultation.

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.

As regards to supporting Guideline 71 *"The more complex a product, the more detailed the information firms will have to collect with regard to the knowledge, experience, financial situation and investment objectives of the client"*, it is important to clarify the concept of "complexity". We believe that there is a distinction to be made between the inherent complexity of a product and whether the product is complex for consumers to understand. For instance, a fixed-interest mortgage is quite a complex product as it relies on interest rate swaps and significant financial engineering. However, the contractual conditions are easy to understand, and certainly easier to understand than the variable interest mortgage, which is a "simpler" product in terms of structure.

However, despite this distinction it is true that in the past complex products have been commercialised to retail clients (such as for instance, interest rate swaps). These types of complex products should only be deemed suitable for a minority of clients and certainly not for the average retail client. In order to identify such clients, very detailed information as regards to knowledge, experience, and financial situation and investment objectives of the client should be compiled. **Therefore, in order to make sure that the consumer belongs to the target segment for which the product was designed the firm must compile all relevant information needed to verify this.** Therefore, Finance Watch supports the intention of Guideline 71.

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