

RETAIL INVESTMENT STRATEGY

COMMISSION SERVICES NON-PAPER ON POSSIBLE SIMPLIFICATIONS

AMAFI's Comments

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI welcomes the release by the European Commission services of their non paper on possible simplification of the rules under the Retail Investment Strategy. We also welcome the Simplification Proposals on RIS from France and Czech Republic (hereafter the FR/ CZ proposal) as well as from the Netherlands (hereafter the NL proposal).

Therefore, ahead of the upcoming trilogues, AMAFI would like to make the following comments on the Commission services non paper on MiFID and PRIPPs, in the light of the FR/ CZ and of the NL proposals for simplification.

I. VALUE FOR MONEY

As previously stated, AMAFI supports the principle of adding a value-for-money (VfM) test designed to verify that packaged retail financial products distributed provide added value for clients.

However, in the case of structured products, the VFM test cannot be based on a comparison with peer groups or with benchmarks. Given the lack of comparable products, the value of these products is assessed using a forward-looking approach to assess their performance net of costs and compare it with the next best alternative.

Therefore, AMAFI strongly advocates VFM methodologies that are asset class specific and appropriate for each asset class.

II. SIMPLIFICATION OF CLIENT CATEGORISATION AS PROFESSIONAL CLIENT

Overall, AMAFI supports increased flexibility in the MiFID client categorisation framework, in particular the foreseen flexibility brought to the work experience criterion. We also welcome the envisaged one-off opt-out exemption for sophisticated transactions. However, we suggest lowering the transaction threshold to €100,000 to better reflect the standard of living of European savers. We also ask for clarification purposes that firms will be permitted to inform their clients about the possibility of requesting a change in category.

Moreover, we continue to support tailoring the transaction frequency criterion based on different market subsets.

III. SUITABILITY ASSESSMENT AND BEST INTEREST TEST

We welcome the proposal by Commission services not to require a standardised suitability report that would not be fit for all different advisors.

However, we disagree with the principle that a client's best interest test is necessary to prevent clients from being sold overly expensive products. To us, in that respect, the introduction of a VFM test is key as it will ensure that all products made available to clients, depending on their different characteristics, provide value for money. We also disagree with the overarching aim to "frame the discretion of the advisor" to the extent that only one product will appear suitable. This approach would result in an overly standardised and limited product offering.

Therefore, we strongly disagree with the proposal to keep the requirement to advise "*the most cost-efficient financial instruments among the financial instruments identified as suitable to the client*". The notion of "most cost-efficient" is to us too narrow and fails to consider the different qualitative characteristics (such as performance, liquidity, risk, quality of management teams, jurisdiction, transparency, ...) attached to the product, which are not captured in the suitability test. Such a requirement could reduce both the diversity and the quality of financial products offered and increase legal disputes.

For these reasons, we fully support the FR/CZ proposal to:

- remove the portfolio diversification clause as it adds little value beyond the existing requirement to check the client's investment needs and savings capacity;
- remove the best interest test.

As for the simplified advice regime, we oppose limiting this regime to:

- diversified, non-complex and low-cost instruments as this is likely to channel European savings towards non-EU products as pointed out in the FR/CZ proposal.
- independent advice, as this would create an unjustified unlevel playing field between independent and non-independent advice.

In contrast, we support the NL proposal to exempt advisers from collecting information on clients' financial position when the investment involves only a modest share of their total income/capital.

IV. APPROPRIATENESS TEST

We reiterate our view that clients must retain the possibility to access non-advised investment services, enabling them to make their own investment decisions according to their own agenda. It is also essential to avoid any confusion for clients and limit the risk of disputes for investment firms, to keep such distribution regime distinct from the advice regime.

Therefore, we strongly oppose adding capacity to bear losses and risk tolerance as new criteria and support the FR/ CZ proposal to remove them.

The diversity of the service offering must be preserved to match the diversity of investor profiles.

V. INDUCEMENTS

A. INDUCEMENT TEST

We take note of the Commission's non-objection to the deletion of the inducement test, which is also supported by the FR/CZ paper, and support such a deletion.

We also take note of the Commission's intention, in case of deletion or significant streamlining of such test, not to weaken the current inducement requirements.

In that respect, AMAFI would like to stress that the quality enhancement principle, differently from what is provided for in the Council text, should not be interpreted as requiring inducements to be proportionate to "*the level of service provided to [each] relevant client*" but to be proportionate to "*the services made available to the relevant clients*". Such a requirement would be i) unrealistic and ii) contrary to the objective sought:

- unrealistic, because it is impossible to justify client by client, that the level of inducements perceived is proportionate to the services actually provided to each client.
- counterproductive, as it undermines the mutualisation provided by the inducement system, which gives less affluent clients' access to value-added services (including ongoing advice) that they would not otherwise be able to afford.

B. UNDERWRITING AND PLACING FEES

The rules on inducements should exempt a corporate payment for investment services e.g. underwriting and placing fees in relation to an end client that buys another investment service relating to that same issuance (e.g. advice or execution services). Without such exemption, there is a risk that the inducement rules (i.e. ban on accepting and retaining, quality enhancement/inducement test, disclosures etc.) could in practice prevent firms from charging issuer clients for the investment services provided and/or from offering end clients the option to subscribe for financial instruments where the firm has assisted with the issuance. Such an interpretation would have very problematic effects on the primary market in the EU with negative effects on the real economy as a result. Payments received by the investment firm for providing services to different clients (issuer and investor) should be addressed through the conflict-of-interest rules in MiFID II, rather than the inducement rules.

VI. DISCLOSURE REQUIREMENTS

We welcome the proposal by Commission services to make IDD and MiFID disclosures maximum harmonization and to fully align cost and performance disclosures between MiFID, IDD and PRIIPs.

A. PRIIPs

We strongly support deleting the sustainability section in the context of SFDR review, as well as maintaining the maximum page length of 3 pages for the KID. Our understanding is that, with this proposal, the “product at a glance” section would be removed, which we fully support.

Conversely, we do not support the inclusion of voluntary interactive tool nor of the “personalized” KIDs’ customer tool as we see a risk that they could be used in an “improper” way without adding value for retail investors. Similarly, we do not favour layered format for KIDs. The KID is a relatively short document and we should encourage investors to carefully read the entire document rather than subjectively suggest that some parts are more important than others. The retooling efforts and costs involved would be very substantial and therefore inaccessible for smaller players.

B. MiFID

Regarding MiFID disclosure requirements, we remain concerned that the requirement to provide detailed information on the performance of securities held in portfolios is excessive in a context where clients are already complaining about excessive information. Putting in place the tools needed to provide this information will necessarily be very complex to implement, costly and will have an upward impact on client billing. Therefore, the obligation to inform on the individual performance of financial instruments should be removed.

VII. PRODUCT GOVERNANCE REQUIREMENTS FOR CORPORATE ISSUERS

We fully support the NL proposal to remove the review obligation of the identified target market for firms advising corporate issuers on the launch of new products (e.g., IPOs). Such advice is a one-off service that should not generate longer-term commitments/responsibilities for the advising firm.

