

## **COMMENTS TO THE PUBLIC CONSULTATION: REVIEW OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE (MiFID)**

ASSOFINANCE is an Italian association of independent financial advisors.

We followed with a great attention the work which led to the consultation paper on MiFID review published by the Commission Services on December 8<sup>th</sup> 2010, with particular regard to issues concerning the definition of complex and non-complex products for the purposes of adequacy/appropriateness.

### **QUESTIONS nn. 87 to 90.**

The consultation paper recognizes that there is uncertainty on what can qualify as a non-complex product. In our opinion none of the two options presented in the paper properly addresses the problem. In principle the aim of providing a regulatory framework which is graduated on the characteristics of the service, of the client and on the financial instrument is correct.

However, also in the light of the new transparency regime which is going to be introduced with the directive on packaged retail investment products (briefly PRIPs), we believe that - provided that disclosure on PRIPs will be properly defined both in its scope and in key information given to investors – the distinction between complex and non-complex products should be abandoned.

Both the current and the new proposed classifications of art. 19(6) of level 1 MiFID are partially overlapped to that coming from PRIPs. Hence, whether these transversal classifications would co-exist, they would only complicate the overall regulatory framework and increase the uncertainties on the respective duties of issuers (subject to PRIPs, Prospectus Directive and UCITS IV) and intermediaries (subject to MiFID).

We believe that the family of packaged investment products is at the same time quite numerous and heterogeneous. In general terms any product exposed to several types of risks is a package (even when synthetically created), but it has also to be taken into account that the complexity of the combinations which can be realized by products' manufactures is varying depending both on the number of underlying assets or reference values as well as on the more or less difficult ways in which they are put together to obtain the final product.

For the above reasons, the best solution is, on the one hand, to adopt an extensive definition of PRIPs and, on the other hand, to set forth proportional transparency requirements based on meaningful and objective synthetic indicators of the risks, the time horizon and the possible returns of financial products.

In this perspective, we think that some of these indicators (specifically those concerning the degree of risk and the time horizon of the investment) should be common to any PRIIP, even those which are quite elementary. Instead, further performance indicators should be provided for products whose financial structure is not elementary, and in any case, when they imply not negligible assumptions of market and/or credit risks. In particular, for these products the representation of the potential payoffs attainable at the

expiry if their time horizon should be offered through a table displaying the risk-neutral probabilities and the representative returns associated with for some significant events (e.g. negative return, positive return lower/higher/in line with the risk-free rate).

In order to favor the creation of an horizontal approach across the different disciplines (also to minimize the regulatory burden for intermediaries), the above classification and the proposed graduated disclosure regime for PRIPs should be shared inside the new formulation of MiFID.

More specifically, the simplified regime of execution-only should be adopted in the case of elementary products (no matter if they are UCITs, bonds, structured deposits, etc) featuring marginal risk exposures and quite typical and straightforward financial engineering. On the contrary, when the riskiness of the product becomes relevant and it is far from being easily understood by clients, it is natural to establish provisions aimed at best safeguarding them through suitability or appropriateness tests, also depending on the class of the client and of the specific service offered.

### **QUESTIONS nn. 91 to 99.**

We substantially agree with all the proposals of the consultation paper aimed at making clear to clients that recommendations provided by independent advisors rely on a more complete and fair analysis of a wide baskets of investment alternatives. We also share the view that the best way to ensure the enforceability of this provisions is to ban any form of inducement.

Nonetheless, we believe that the mentioned provisions should be assisted by more firm provisions addresses to definitively recognize that personal investment advices expressed by intermediaries which belong to the same group of the issuer (or share common interests with the latter) are a contradiction in terms at least for the unavoidable presence of conflicts of interests, which limit the possibility for these intermediaries to advice a product which is really able to meet the client's profile.

In this perspective, distributors should be committed just to the delivery of the KIID prepared by issuers; while further support to clients will be provided by independent advisors (as envisaged by the Commission inside the PRIPs consultation paper), whose interests are not in conflict with those of their clients.

We also believe that, in order to provide the best service to their clients, independent advisors should select the products to insert in their baskets by comparing them according to the same synthetic indicators contained in the KIID about the risk class, the possible returns and the optimal time horizon of the investment.

In this way, they could also ensure their clients a promptly update (if necessary) of key information on the risk-return profile of the investment during its time horizon, hence preserving the correctness of informative set over time and the consistency of the items in this set with respect with those represented in the KIID. Clearly, in order to achieve this ambitious but absolutely relevant target, specific provisions (or at least recommendation) should arise at the regulatory level to lead issuers to share with qualified independent advisors knowledge of the financial engineering behind the different products.