

Milan, 06 September 2019

Prot. 39/19
MFE/gc

ESMA
CS 60747
103 rue de Grenelle
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France

Re: ASSOSIM contribution to ESMA Call for evidence on Impact of the inducements and costs and charges disclosure requirements under MiFID II

ASSOSIM¹ welcomes the opportunity to provide comments on the ESMA's Call for evidence in subject as better detailed here below.

Section 4.1 - MiFID II disclosure requirements for inducements permitted under Article 24(9) of MiFID II

F. If you have experience of the inducement disclosure requirements across several jurisdictions, (e.g. a firm operating in different jurisdictions), do you see a difference in how the disclosure requirements under Article 24(9) of MiFID II and Article 11(5) of the MiFID II Delegated Directive are applied in different jurisdictions?

Assosim acknowledges that in the EU countries there is not a homogeneous implementation of Art. 11.2. a) of the Commission Delegated Directive 2017/593, with consequent impacts on the quality enhancement requirements, inducements allowed and relating disclosure to be provided to clients. In fact, we note that, despite the non-exhaustive nature of the list of quality

¹ *Associazione Intermediari Mercati Finanziari - ASSOSIM* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. Assosim has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

enhancement requirements set out by the aforementioned provision of the Delegated Directive (as also expressly set out in Recital 21), in certain countries (like Spain) such list is strictly limited to what provided by the above mentioned article, while in other countries (like Italy) there is uncertainty about the further conditions that can justify an inducement. This is particularly relevant in case of the service of *placement* -without the provision of investment advice- to a professional client (especially “per se”) as the conditions set out by Art. 11.2. a) are substantially not applicable for such kind of client.

To this regard, it would be useful if Esma could confirm that the case under example IX, page 14, of the CESR Document “*Inducement under MiFID*” of 2007² is still a valid reference in order to satisfy the quality enhancement test provided -although with different features- both in MiFID I and MiFID II.

Section 4.2 – Costs and charges disclosure requirements under Article 24(4) of MiFID II

I. What are the issues that you are encountering when applying the MiFID II costs disclosure requirements to professional clients and eligible counterparties, if any? Please explain why. Please describe and explain any one-off or ongoing costs or benefits.

J. What would you change to the cost disclosure requirements applicable to professional clients and eligible counterparties? For instance, would you allow more flexibility to disapply certain of the costs and charges requirements to such categories of clients? Would you give investment firms’ clients the option to switch off the cost disclosure requirements completely or apply a different regime? Would you distinguish between per se professional clients and those treated as professional clients under Section II of Annex II of MiFID II? Would you rather align the costs and charges disclosure regime for professional clients and eligible counterparties to the one for retails? Please give detailed answers.

According to Assosim’s members, the cost & charges disclosure is of very limited value and burdensome for *per se* professional clients/eligible counterparties who are fully aware of the terms and conditions of the services they are provided with. Therefore, we would suggest disapplying such regime for these types of clients with the possibility to opt-in. Should our proposal be not accepted, we would suggest introducing the possibility to opt-out the cost & charges rules for *per se* professional clients/eligible counterparties.

P. Do you think that the application of the MiFID II rules governing the timing of the ex-ante costs disclosure requirements should be further clarified in relation to telephone trading? What would you change?

² “An investment firm that is not providing investment advice or general recommendations has a distribution or placing agreement with a product provider or issuer to distribute its products in return for commission paid for by the product provider or a member of its group.

In such a case the investment firm will be providing an investment service to its end-clients; in the absence of payment by the product provider or issuer these investment services, most likely, would not be provided; therefore, the payments may be seen as being designed to enhance the quality of the service to the client. The other elements of Article 26 (b) must also be met and in considering this, Recommendation 4(c) in particular may be relevant”.

Telephone trading -mainly chosen by wholesale investors- has been negatively impacted by cost & charges *ex ante* disclosure rules, as further clarified by ESMA in the Q&A n° 28 referred to in par. 31 of the Call for evidence document. In fact, the need of providing simultaneously the same information in a durable medium delays the conclusion of the transaction with a potential prejudice for clients especially in case of volatile financial instruments (i.e. equity and/or derivatives). Therefore, we would ask ESMA to review its approach allowing that cost & charges disclosure -already given by means of recorded telephone conversations- could be provided in a durable medium (or through a website) immediately after the transaction and not simultaneously.

Q. Do you think that the application of Article 50(10) of the MiFID II Delegated Regulation (illustration showing the cumulative impact of costs on return) helps clients further understand the overall costs and their effect on the return of their investment? Which format/presentation do you think the most appropriate to foster clients' understanding in this respect (graph/table, period covered by the illustration, assumed return (on an ex-ante basis), others)?

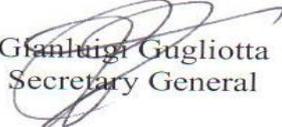
Our members believe that the illustration showing the cumulative impact of costs on return has led to confusion for investors, non-comparable and meaningless data, wrong expectations deriving from returns estimates in *ex-ante* disclosure and implementation burdens. Therefore, we would ask to delete Art. 50(10) of the MiFID II Delegated Regulation.

R. Are there any other aspects of the MiFID II costs disclosure requirements that you believe would need to be amended or further clarified? How? Please explain why.

Assosim believes that many aspects of the cost & charges regime require common methodologies and implementing guidelines at ESMA level in order to ensure data comparability for investors and a level playing field in the EU. To this regard, while we have appreciated the issuance of ESMA Q&As on cost & charges, considering the present need for specific methodologies and solutions, we would suggest the adoption of implementing guidelines since they require a prior consultation process that gives the industry the possibility to highlight relevant issues and solutions.

We remain at your disposal for any further information or clarification.

Yours faithfully,



Gianluigi Gugliotta
Secretary General