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CONSULTATION 2 DEGREES INVESTING INITIATIVE

DRAFT QUESTIONNAIRE AND GUIDANCE FOR ASSESSING CLIENTS' SUSTAINABILITY PREFERENCES

AMAFI'S ANSWER

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 150 members operating in equities, fixed income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI understands that 2 Degrees Investing Initiative has been tasked in the context of the Finance ClimatAct to work on how to facilitate the investments of retail investors with ESG objectives, one of the outputs being a draft questionnaire and guidance for assessing clients' sustainability preferences (the Questionnaire and/or Guidance).

On a general standpoint, AMAFI has concerns with the status of this Guidance.

Whereas new MiFID II rules on clients' ESG preferences decided through a democratic process at EU level will enter into force in August 2022, this guidance would come as a national addition on the same subject but would not follow any of the existing institutional process at national level.
This raises two issues in our view, as the initiative circumvents the standard rule setting process in France, without the guarantee of fairness this process brings, and the unclear status of the guidance creates risks to financial institutions.

It may be that stakeholders in the initiative, such as ADEME, AMF or ACPR, consider that the result of the EU work on ESG clients' preferences does not meet our domestic ambition, but this should then be raised first at the level of the EU institutions, including the European Supervisory authorities (ESMA is currently working on updating its Suitability Guidelines to include clients' ESG preferences[1]), and/or acted upon nationally though our standard processes.

AMAFI understands that this Guidance is not meant to have legal force, but it is meant to gather force through its acceptance and use by retail investors, hence imposing itself to financial institutions through practice rather than law. AMAFI agrees that civil society has a role to play in fostering the transition to sustainability, but we also believe that, when the matters at stake have already been discussed/are being discussed by our institutions and result in concrete regulation, such as the one on MiFID II ESG, this institutional process should be abided by.

Therefore, in AMAFI's view, to avoid any ambiguity, it is important that, at a minimum, such Questionnaire would be flagged as an example of good practice and not as a standard.

[1] See ESMA's draft Guidelines on suitability (*ESMA35-43-2998*).

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On a more practical matter, it should be noted that the new MiFID II rules are highly demanding and will require a steep learning curve both from clients and financial institutions (FI). Their implementation triggers major adjustments to the FIs' processes and procedures. This will be extremely challenging since part of the underlying necessary information on products' ESG characteristics will still be missing at the date of entry into force of these new rules.

In such context, AMAFI does not see favorably the introduction of new recommendations to better grasp clients' ESG preferences beyond those already provided for by MiFID II. This will not help investors who would face two distinct approaches (as the MiFID II one is compulsory anyhow) and will make the implementation by FIs even more complex.

More specifically, you will find hereafter AMAFI's comments, on the two sets of elements composing the draft Questionnaire and Guidance:
- "(*1) requirements to meet the threshold for regulatory compliance for assessing client sustainability preferences and*
- (2) steps to assess wider sustainability motivations (not addressed by the regulatory concept of client sustainability preferences) which are relevant to implement better practice for a didactic and comprehensive assessment of all sustainability related aspects associated with client investments".

(1) On the requirements to meet the threshold for regulatory compliance

AMAFI does not see much added value in the developments made in the Questionnaire and Guidance on regulatory compliance. In several instances they are not as detailed as ESMA's draft Guidelines on suitability and therefore might not be very useful, both for IFs and investors (e.g. nothing is clarified about the concrete implementation of the "*to what extent"* information required during the suitability test under Article 2 (7) of the MiFID II Delegated Regulation, whereas the operational implementation of such requirements raise many questions).

In some instances, the draft Questionnaire and Guidance might even read contrary to such Guidelines or to MiFID II Delegated Regulation: as an example, paragraph 70 c) page 24 of the guidance document[2] reads contrary to paragraph 80 of ESMA's draft Guidelines on suitability[3] in relation to a key point with regards to the suitability assessment outcome. Another example would be the proposed questioning on PAIs under paragraph c) of Q4 that does not seem compliant with the revised Article 2.7 c) that requires IFs to ask questions on PAIs both with qualitative or quantitative elements[4]

Moreover, AMAFI is strongly opposed to having a standard questionnaire for all firms, as each of them should have the liberty to question their clients in the way they deem best adapted to them and best suited to their product offer, as long as it is compliant with regulatory requirements. This seems also important to us for the expression of the necessary diversity of investment approaches proposed in the market.

[2] "*Outcome 3: No suitable financial instrument is available for recommendation by the investment firm which satisfies the investment objectives of the client and any sustainability preferences. In this scenario, investment firms can still propose financial instruments to the client but not as meeting sustainability preferences. Where this is the case, clients should have the opportunity to adapt information [on] their sustainability preferences*."
[3] "*Where a firm intends to recommend a product that does not meet the initial sustainability preferences of the client in the context of investment advice as referred to in Recital 8 of the MiFID II Delegated Regulation, it can only do so once the client has adapted his/her sustainability preferences"). This could be extremely detrimental to clients' overall understanding.*"
[4] Article 2.7: "*sustainability preferences" means a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment:* (…) *(c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client*".

Introducing a questionnaire that might not be in line with the business model of a firm and would be different from the one usually used by its advisors (who are trained to gain command of it) is likely to introduce confusion both for clients and advisors whereas they already face a real challenge grasping the new concepts introduced by the sustainability legislation.
It might even give rise to misunderstanding from clients who could consider that their prefilled Questionnaire is the one to be considered for the suitability assessment instead of the MiFID II compliant one. This could create frustration towards the IFs but also litigation risk, even more so if there are inconsistencies between the two questionnaires.

(2) ON THE STEPS TO ASSESS WIDER SUSTAINABILITY MOTIVATIONS

Whereas AMAFI has sympathy for the efforts made to try to address the investors' "real" ESG expectations, it is concerned the necessary introduction of new concepts (on top of the legally required ones that are already very complex) is likely to create confusion and irritation amongst clients who may be tempted to disregard sustainable investments altogether.

In any case, in AMAFI's view, addressing wider sustainability motivations should only concern a limited subset of clients having a strong interest in the matter, to avoid the risk of confusion described above. In such situations, AMAFI deems the Questionnaire and Guidance might be useful to guide advisors in their discussions with clients expressing such ESG motivations.