Frankfurt,
21 March 2022

BVI[1]'s position on Targeted Consultation on options to enhance the suitability and appropriateness assessments

A. An enhanced client assessment regime - General

The new regime would be built around two parts: a first part focused on assessing, via a unique standardised questionnaire, the retail investor's investment objectives, risk tolerance and personal constraints and a second part dedicated to establishing a basic but personalised asset allocation strategy for the retail investor's investment portfolio.

Question 1. Do you consider that a unique and standardised retail investors' assessment regime, as described above, applicable to all investment services and enhanced with the provision of a personal asset allocation strategy, could address the weaknesses of the current suitability and appropriateness regimes?

☐ Yes
☒ No
☐ Don't know

Please provide a detailed answer. (5000 characters)

We are of the opinion that both the suitability assessment and the appropriateness assessment are well-designed and proven processes that do not require extensive change. We are not aware of any significant defects and the alleged (general) weaknesses are not specified at all. From the perspective of both investors and investment intermediaries, careful consideration should be given to whether known and well-functioning processes actually really need to be redesigned. Such a significant change in the system of obligations for certain investment services would have a massive impact on both investors and investment intermediaries regarding processes, procedures and IT infrastructure. Hence, a very careful consideration must be made as to whether such a significant change is really appropriate and in the interest of both the demand side and the provider side. Should the Commission continue to address the issue, we consider it essential that the alleged weaknesses in the existing requirements were clearly identified.
In particular, the differentiation between appropriateness assessment and suitability assessment should be maintained. We are therefore very critical of the proposal to create an assessment regime for all investment services.

Standardisation also leads to the individuality of the clients being curtailed. In principle, it must be possible for distributors to include supplementary information in the suitability assessment that goes beyond standardisation. We also understand question 17, p. 1 in this sense. The value of investment

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

advice for the client grows the more individually one can respond to his wishes. The extent to which this fits with a standardisation across all financial products and clients should be examined. A standardised query may not add any value if too many additional information is collected individually.

Irrespective of this, the consulted approach would also have to be considered in terms of its overall economic impact. A standardisation of the investment process in each and every detail would not allow any innovation to the benefit of the investor: a fixed frame is just fix. On top, capital allocation of investments would become more uniform, i.e. from an economic perspective less diversified. This could be e.g. detrimental to the aim of the capital market union to improve access of SMEs to capital markets. On top, investments will automatically become even more channelled and less diversified. That would amplify the effects of volatile market developments in tense market situations, not mitigate them.

Question 2. Do you think a new retail client assessment (enhanced with a personalised asset allocation strategy) and its transferability could bring benefits and opportunities to retail investors and financial intermediaries?

☐ Yes, it could bring them benefits and opportunities
☒ No, it would not bring them specific benefit
☐ Don't know / no opinion / not applicable

Question 2.1 If yes, which of the following benefits and opportunities might a new retail client assessment (enhanced with a personalised asset allocation strategy) and its transferability bring to retail investors and financial intermediaries? (please select as many answers as you like)

☐ Increasing participation of retail investors in the capital markets
☐ Preventing or limiting mis-selling and ill-advised investments
☐ Address potential " gamification" of the retail investment process
☐ Useful supporting measure for retail investors also when investing without advice
☐ Favouring more competition between financial advisers by facilitating customer switching and standardising performance metrics
☐ Reducing burdens and costs linked to the investors' onboarding (by avoiding duplication) for both retail investors and financial intermediaries
☐ Allowing different financial intermediaries to have a more comprehensive view of the investments held by a retail investor and to offer a more holistic and aligned investment strategy.
☐ Others benefits and opportunities

Please explain your answers. (5000 characters)

Question 3. Should retail investors be able to transfer the results of their assessment together with their personalised asset allocation strategy to brokers/financial intermediaries of their choosing in order to facilitate switching between or using multiple brokers/financial intermediaries and generally enhance the investor experience?

☐ Yes
☒ No

☐ Don't know

Please explain your answer. (5000 characters)

In our opinion, the use of client exploration by a third party carries the risk of increased misadvice if it is used without further verification. Otherwise, on the one hand, any errors would be perpetuated. On the other hand, it is also true that in order to be able to provide good investment advice, advisors must review the original client information in every advisory discussion and adjust it if necessary. For example, due to changes in life circumstances (marriage, birth of a child), client information, such as risk tolerance, are likely to change. The same applies, for example, in the case of an inheritance: in this case, an investor may be prepared to take different risks than with the funds he has earned himself. This makes clear that a transferred client exploration without a renewed review is not in the interest of the client. Question 17 should therefore be assessed extremely critically. In any case, it should be possible to review and revise the personal asset allocation strategy.

Hence, we are against an automated data transfer between intermediaries as it would not bring essential benefits without including at the same time massive risks.

However, if a clients voluntarily chooses to make the client exploration and/or personal investment strategy available to a third service provider, he should be able to do so on basis of an own initiative (e.g. via E-mail). However, service providers should not be obliged to carry out automated data transmission.

However, a basic stock of client data, for example, that is generally collected from all distributors could be useful. Customers would not have to communicate their basic data over and over again vis-à-vis various service providers, and distributors can supplement these individually if necessary. In any case, it is important that the individuality of the customers is not put at stake. In addition, there are currently differences in the recording of client data, e.g. in the risk classification. In these cases, a sharing cannot be carried out in a meaningful way.

Question 4. Would you see any drawbacks that could emerge from the creation and use of such a new suitability assessment applicable to all investment services (including its sharing/portability if any) for retail investors and financial intermediaries?

☒ Yes
☐ No
☐ Don’t know

Please explain your answer. (5000 characters)

The suitability assessment should continue to apply only to investment advice and portfolio management. The tiered approach (suitability assessment, appropriateness assessment, execution only) should be maintained. Clients are free to decide whether they want investment advice or act as self-deciders. We continue to be of the opinion that the appropriateness assessment is sufficient for self-decision-makers and that full client exploration is not appropriate in this context. It is to be feared that this could tie clients up more time and deter them from participating in the capital market due to the time factor.

Any change to existing processes is both cost-intensive and labour-intensive. Innovations should therefore be integrated into existing processes as far as possible and costs/benefits should be weighed against each other.

In any case, it must remain possible for clients to acquire financial instruments outside the determined asset allocation strategy. The Commission also seems to support this view ("However, retail investors should ultimately remain free to take autonomous investment decisions, even where they do not align with the allocation strategy" Introduction, page 4)). However, it is unclear what obligations the financial intermediaries would have in this context (e.g. warning and information obligations). It also seems unclear to us to what extent the financial intermediary can still issue recommendations in the sense of investment advice outside of the personalised asset allocation strategy.
In addition, the question arises as to how high the effort for the creation of such a personalised asset allocation strategy will have to be and whether the envisaged portability will not lead to a financial intermediary having to price it for economic reasons. These costs could then in turn have a deterrent effect and lead to people with lower incomes/assets not participating in this. This would miss the actual goal of bringing more people to the capital markets. Additionally, see our comments on Q3.

Question 5. Who should prepare the clients' assessment and their asset allocation strategy?

☒ Any financial intermediary selected by the retail investor
☐ An independent function within the financial intermediary selected by the retail investor
☐ An independent financial intermediary selected by the retail investor
☐ Other (e.g. public entity)

Please explain your answers (in particular if you ticked the box for "other"). (5000 characters)

Client exploration is the basis for advice and should be able to be carried out by any financial intermediary. For the important topic of investing, a trusting relationship between advisor and client is necessary - therefore the client should also be free to choose who carries out the asset allocation strategy. In addition, if the advice and the asset allocation strategy were to be determined at different times, the client would be tied down more - he would have to make two appointments. This could run counter to the goal of increasing the participation of private investors in the capital market.

Question 6. What should be the key components of a standardised personal investment plan? (please select as many answers as you like)

☒ A description of the investor
☐ A description of **duties and responsibilities of the investment adviser** drawing up the personal investment plan, custody arrangements and the duties of the client to signal changes in her personal circumstances
☐ **Procedures and reviews** that are necessary to keep the IPS topical and up-to-date
☒ **Investment objectives**
☐ **Investment constraints**
☐ **Technical guidelines** specifying technical aspects on how the investment should be carried out, such as permissible use of leverage or derivatives; exclusion of specific types of assets from investment, if any
☒ **ESG factors**, such as specific types of assets to be excluded from investments
☐ **Evaluation and review**

☐ Rules on identifying **strategic asset allocation -** including the baseline allocation of portfolio assets to asset classes
☐ **Rebalancing** - policies on rebalancing asset class weights

Please explain your answers. *(5000 characters)*

Since the existing processes work well in our view (see our answer to question 1), the standardised personal investment plan should in principle be based on the criteria that are also part of the suitability assessment. This would include knowledge and experience, financial circumstances and risk tolerance. ESG preferences will also be added from August 2022. On top, service providers must be free to include other aspects of a retail client's profile that can serve as the factual basis to provide additional services with benefits for the retail client.

Question 7. What are the main investment objectives and constraints that should be addressed in a personal investment plan? (please select as many answers as you like)

☐ **Return objectives**: Long-term investment return per year, in nominal terms, net of fees
☒ **Constraints**: Liquidity - expected investor outlays, etc.
☒ Time horizon
☐ Tax situation
☒ Legal and Regulatory factors, if any
☒ Unique investor circumstances, e.g., ethical or environmental preferences

Please explain your answers. *(5000 characters)*

See our answer to question 6.

Question 8. Storage and accessibility of the new suitability assessment, including the asset allocation strategy.

Do you agree with the following statement?

All data in the suitability assessment and the personalised asset allocation strategy (the "personal investment plan") should be stored electronically and, subject to the client ' s consent, the investment plan personal should be accessible to all financial intermediaries that the client employs ("open finance").

☐ Yes
☐ No
☒ Don't know

Please explain your answer. (5000 characters)

See our answer to question 3. Additionally, the decision as to who has access to a client exploration and the personalised asset allocation strategy must always remain with the client. It seems extremely difficult to ensure "meaningful" consent in this regard, given that the average client has no idea what kind of data is being collected in the course of a suitability assessment or setting up of a "personal investment plan". At least it must be ensured that the actual data which are supposed to be made accessible to other financial intermediaries are disclosed to the client and subject to his approval on a case-by-case basis.

Question 9. How often should the client's assessment and asset allocation strategy be updated?

A personal investment plan should be reviewed regularly in order to ensure that it remains consistent with the client's investment objectives and constraints. A personal investment plan should also be reviewed as soon as a financial intermediary becomes aware of a material change in the client's circumstances. A client may request an update of her personal investment plan when her objectives, time horizon, personal circumstances of liquidity needs change.

Question 9.1 When the investor is NOT under advice (please select as many answers as you like)

☐ a. once per year
☐ b. upon significant changes in the retail investor's personal circumstances or objectives, communicated by the investor to its financial intermediary
☐ c. upon suggestion of the financial intermediary selected by the investor, subject to providing the investor with any necessary written justification evidencing the need for an update, and subject to the investor's agreement + duly stored

☒ d. other

Please explain your answers. (5000 characters)

We expressly oppose the necessity of drawing up an asset allocation strategy (see our answers to questions 1 and 4).

Regular updating would place an unreasonable burden on the financial intermediary. In addition, the question arises, for example in option b), whether financial intermediaries should be obliged to actively approach clients.

Moreover, the comments in question 9 do not fit with the assumptions made for question 17.

Question 9.2 When the investor is under advice/portfolio management (please select as many answers as you like)

☐ a. once per year
☒ b. upon significant changes in the retail investor's personal circumstances or objectives, communicated by the investor to its financial intermediary
☐ c. at the initiative of the financial intermediary providing the advice and subject to written justifications evidencing the improvement, communicated to the investor and duly stored
☐ d. other

Please explain your answers. (5000 characters)

In order to provide high-quality investment advice, it is necessary for the retails clients details to be queried/checked for up-to-datedness or changes for each investment advice consultation. Personal circumstances can change between different advice events (change in income or risk tolerance, additional family members etc.). See also our answer to question 3.

Question 10. Please provide us with an estimate of the necessary costs to set-up and update this possible new client assessment (including the personalised asset allocation strategy) in a structured and machine-readable format as well as for its storage in a way accessible for future reference by the retail investor and competent authorities.

One off costs:

Ongoing costs:

Please explain your answer and provide a breakdown of the most important cost components. (5000 characters)

Question 11. Please provide us with a cost comparison between the costs associated to this possible new client assessment regime (including the personalised asset allocation strategy) in and your current costs associated to compliance with the current suitability and appropriateness regimes?

Your current costs associated to compliance with the current suitability and appropriateness regimes:

Estimate costs associated to compliance with the possible new suitability assessment regime (including the personalised asset allocation strategy):

Please explain your answer. (5000 characters)

Question 12. Do you consider that the new client assessment regime would allow material cost savings for financial intermediaries taking into account the standardised and single nature of the possible assessment regime, once the initial sunk costs are absorbed?

☐ Yes
☒ No
☐ Don't know

Please explain your answer. If possible, please provide estimates. (5000 characters)

From our point of view, it cannot be assumed that the introduction of a new client assessment regime will result in simplifications and subsequent cost savings. A major reason is that in the specific situation it must always be clarified whether the data collected by a third party are still up-to-date or whether there have been any changes, and if so, which ones. This procedure would be mandatory in order to prevent incorrect advice. Against this background, no significant cost savings can be identified from the use of previous client assessments.

B. A personalised asset allocation strategy

A personalised asset allocation strategy would be the main output of the new client-centric assessment carried out by a financial intermediary. It would represent a basic investment framework for achieving the retail investor's investment objectives and aim to provide the investor with maximum returns in view of its personal circumstances, while exposing the investor to an optimal amount of risk. This would be achieved by setting out a unique plan for exposure (in % terms for instance) to an optimal diversification of broad asset classes (e.g. fixed income, equity, commodities, etc.) and set the right risk-return profile for the retail investor's investment goals.

The rules on asset class categorisation could feature a varying level of details and granularity. For example, the legislation could establish very general asset classes across which diversification should be ensured (e.g. equity, bonds, commodities, real estate, private equity, hedge funds) or it could foresee or allow for a creation of more detailed 'sub-asset classes' (government bonds vs. corporate bonds, high yield vs. investment grade bonds, large cap vs. small cap shares, etc.).

This personalised asset allocation strategy could then be made portable and transferable across financial intermediaries that the retail investor chooses to interact with. It should then be determined whether and to what extent financial intermediaries should be allowed to depart from this personalised asset allocation strategy and under what conditions.

Question 13. Should the rules on personalised asset allocation strategy foresee standardised investor profiles based on retail investors' personal constraints, risk/return appetite and objectives?

☒ Yes
☐ No
☐ Don't know

Question 13.1 If yes, please specify what profiles classification you would recommend and provide explanations?

See our answer to question 6.

Question 14. Which elements should form the basis for distinguishing between asset classes within the asset allocation strategy? (please select as many answers as you like)

☒ Risk
☒ Return
☒ Paired correlation with other asset classes
☒ Additional criteria

Please explain your answer and provide details on the additional criteria if any.

See our comments on Question 2. However, the aforementioned criteria have an impact on the development of an asset allocation strategy. On top, there are more essential elements like e.g. sustainability preferences or investment horizon which are highly relevant. Furthermore, service providers must be free to include other aspects that can serve as the basis to provide additional services with benefits for the retail client.

Question 15. Exposure to assets, as set out in the asset allocation strategy, could be achieved either by investing directly in securities (e.g. shares, bonds), or via investment in potentially complex financial products (e.g. funds, structured products, insurance-based investment products) or a combination thereof.

How should a financial intermediary assess best value-for-money when considering asset classes or sub-asset classes offering the optimal exposure for the retail investor?

Please explain your answer.

Question 15 is not self-explanatory. We do not see a context between para 1 and para 2.

Nonetheless, it is important to know whether an investor wants to invest directly or via packaged investment products. It should be borne in mind that due to the diversified asset allocation, for example, the risks of investing in a fund are significantly lower as compared to direct investments in shares of a single issuer.

Just for clarification, we disagree with the wording in Question 15 that funds form part of a category of potentially complex financial products. UCITS (with the exemption of structured UCITS) are non-complex financial instruments (see Art. 25 (4) (a) (iv) MiFID II). At present, due to an undifferentiated and questionable assessment by ESMA, just Alternative Investment Funds (AIFs) are considered complex without recourse to an individual complexity test (see ESMA MiFID II /MIFIR Investor Protection Q&A, Section 10, Question 1).

Question 16. The rules on the asset allocation strategy should allow for the establishment of asset classes that are fit to achieve the investment objectives of retail investors.

How should those rules take into account situations where the investment intermediary wishes to offer products that do not fit into one of the common asset categories?

☐ Where the intermediary proves that the risk, return and correlation properties of the product are equivalent to those attributed to one of the established asset classes, he/she can consider that instrument as belonging to that asset class
☐ Such products should only be made available to the investor at his or her explicit request, and not as a part of the investable universe determined by the asset allocation strategy

☒ Other solutions

Please explain your answer, in particular where you express support for ‘other solutions’.

In practice, there are always situations where the retail investor would like to deviate from the general client categorization in specific cases on the basis of special circumstances: e.g. a generally rather risk-averse retail client has the wish to invest an unexpected receipt of money (e.g. a gift) with more chances and risks. Investment intermediaries must have the means to accommodate such needs. Once again, what is decisive is the express customer request in the specific situation and not on the basis of a historical situation that may even have been documented only by a third party and then transferred to the service provider.

Question 17. Although the form and content of the asset allocation strategy should be prescribed to a certain extent, financial intermediaries will always exercise a degree of discretion when establishing the asset allocation for a given investor. Competition between financial intermediaries in establishing an optimal asset allocation strategy for a given set of client data could yield better quality asset allocation propositions for the client. On the other hand, changing without objective reasons the investment guidance set out by the asset allocation strategy should be avoided in order to ensure that his or her investment goals are attained.

Should a financial intermediary other than the one that drew up the client assessment be able to propose a different asset allocation strategy than the one originally established, where the data required to produce the asset allocation strategy are made available to that financial intermediary?

☒ Yes, but only when there are objective reasons (see notably (b) and (c) in Question 9.1 and 9.2 respectively.)
☐ No
☐ Don’t know

Please explain your answer.

The use of client exploration by a third party carries the risk of increased misadvice if it is used without further verification. On the one hand, any errors would be perpetuated. On the other hand, it is also true that in order to be able to provide good investment advice, advisors must review the original client information in every advisory discussion and adjust it if necessary. For example, due to changes in life circumstances (marriage, birth of a child), client characteristics, such as risk tolerance, can also change. The same applies, for example, in the case of an inheritance: in this case, an investor may be prepared to take different risks than with the funds he has earned himself. This makes clear that a transferred client exploration without a review poses a risk and is therefore not in the interest of the client. Question 17 should therefore be assessed extremely critically. In any case, it should be possible to review and revise the personal asset allocation strategy.

Question 17.1 If yes, should the investor be required to give explicit consent for the development of a new asset allocation strategy?

☐ Yes
☒ No

☐ Don't know

Please explain your answer.

Explicit consent is not in the interest of the client. The expertise lies with the advisors. If, in their view, the strategy is flawed or should be adjusted, the client must be informed. A consent requirement could lead to a situation where clients simply stick with the old strategy due to lack of time or desire. Interaction between advisors and clients is imperative.

Question 18. Would you have any general comments on an enhanced client assessment regime and/or personalised asset allocation strategy?

☒ Yes
☐ No
☐ Don't know

Please explain your answer.

One objective of the Capital Markets Union is to increase the engagement of retail investors to the capital markets. In our opinion, this can only be achieved in a largely stable process landscape based on a largely stable regulatory basis. Past experience shows that fundamental regulatory changes in securities investments for retail investors lead to massive conversion breaks in practice on the supply and demand side. There is a risk that some providers will (further) withdraw from the provision of certain securities financial services and that retail investors will turn away from investing in securities or not be interested at all due to multiple changes and that this potential is not (over)compensated by any new approaches.

Irrespective of this, the consulted approach would also have to be considered in terms of its overall economic impact. A standardisation of the investment process in each and every detail would not allow any innovation to the benefit of the investor: a fixed frame is just fix. On top, capital allocation of investments would become more uniform, i.e. less diversified from an economic perspective. This could be e.g. detrimental to the aim of the capital market union to improve access of SMEs to capital markets. On top, investments will automatically become even more channelled and less diversified. That would amplify the effects of volatile market developments in tense market situations, not mitigate them.

Therefore, we are convinced that the goal of the capital markets union cannot be achieved by fundamentally turning away from functioning models (suitability, appropriateness) but - if at all necessary - by adapting the existing established regulatory framework.