Svensk Värdepappersmarknad
Swedish Securities Markets Association

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SSMAs[1] comments to the ESMAs Call for Evidence on the integration of sustainability preferences in the suitability assessment and product governance arrangements

1. General comments

- The SSMA understands that ESMA is interested in the implementation of the new sustainability requirements in MiFID II. However, we find the timing of this call for evidence unfortunate since investment firms are in the process of implementing the suitability and product governance guidelines that start to apply in October 2023. Since the implementation process is still ongoing, the input which can be provided at this stage is limited and may be subject to changes in the upcoming months. Against this background, it is important that ESMA is careful when drawing conclusions from the responses received.

- The SSMA notes that many of the questions seek input from individual firms. To a large extent this information is sensitive to share from a competition law perspective (e.g., data and statistics regarding client behaviour, strategic decisions relating to offering of products and services and other implementation measures) which means that not all questions can be discussed within a trade association such as the SSMA. In SSMA's response we have therefore used the term "N/A" to indicate those questions which we consider must be answered at an individual firm level. ESMA may find the result of the supervisory activity carried out by Finansinspektionen in the summer 2023 as a useful complement to our response.

- Unlike what is stated in ESMAs suitability guidelines, the limited number of taxonomy aligned products available to the market means that adaptations will be very common (e.g., for hedging products it will always be the case).

- It should also be noted that the extent and complexity of the EU-regulatory framework in the sustainability area requires a lot of resources relating to education of staff, IT-systems and internal procedures etc. Compliance with these rules is challenging, in particular for smaller investment firms. Thus, there is a risk that the

[1] The SSMA is a trade association representing the interests of investment firms active on the Swedish securities market.

EU-framework will have a negative impact on the competition which is not good for retail clients nor the EU capital market as a whole.

- The SSMA notes that ESMA does not seek input as regards the interpretation of the legal requirements in MiFID II delegated acts or ESMA guidelines. However, we would nevertheless like to take the opportunity to highlight the following:

  (i) Firms but also retail clients can allocate only a certain amount of time to each session of providing investment advice (including collecting/providing information through questionnaires, discussing and understanding the client's preferences etc.).Any requirement relating to the client's sustainability preferences when providing investment advice should be calibrated to not encroach disproportionally on other aspects of the suitability assessment which, formally, should be given priority (for example the clients preferences regarding risk).

  (ii) Further guidance is needed e.g., in the following areas:

    - How to apply sustainability requirements on transactions made for hedging purposes.
    - Application of SFDR on individual portfolio management, including how to use templates for tailormade portfolios, if possible.
    - Relationship between article 20 d in POG guideline 2 and suitability preferences, e.g., if this is a category for "other sustainable instruments" for which 2.7 a-c cannot be used.

2. Specific questions

2.1 Sustainable finance and financial education

Q1: What actions did firms implement within their organisation to take into account the new requirements related to sustainability preferences?

Please elaborate especially on the following:

• What proportion of firms' employees (differentiating between client facing staff and the other staff) have received training on sustainability topics? What these trainings consisted of? Was any test or exam put in place?

• Which conflicts of interest relating to the integration of clients' sustainability preferences did firms identify and which measures did firms take to ensure that these conflicts of interest do not damage the interest of clients?

SwedSec Licensing, a subsidiary of SSMA, is a self-regulatory body on the Swedish market which is responsible for licensing, training and disciplinary measures for staff working in affiliated companies. At present, approximately 280 firms are affiliated with Swedsec and more than 23,000 of their employees are active licence holders. Knowledge related to sustainability-related legal requirements is a part of SwedSec' s licensing exams as well as annual knowledge updates. Link: https://www.swedsec.se/en/about-swedsec/
In addition, many Swedish investment firms have internal training programs in order to ensure that the firms comply with the legal obligations in MiFID II e.g., that advisors and other staff members have relevant knowledge and experience in order to perform their tasks. The scope of such internal training varies depending on the firms' services and products and tasks to be performed by the staff in question.

The SSMA notes that the Commission has proposed the inclusion of new requirements on knowledge and competence regarding sustainability in RIS-proposal, which is likely to put additional focus on these issues in the years to come. In order to ensure that the legal requirements are relevant and proportionate, it is important to ensure that firms can continue to employ a combination of internal and external measures and tests.

Q2: Are there specific aspects of sustainable finance that retail investors struggle to understand?

For example:

• Understanding of general aspects such as why it is important to consider sustainability risks and factors when investing?

• Understanding differences between sustainable products and products without sustainability features?

• Understanding that sustainability characteristics and (expected) return are two separate issues?

• Understanding the new legal definition of "sustainability preferences" and its components (e.g., categories a), b) and c), minimum proportion, principal adverse impact indicators (PAIs), etc.)?

Some examples of aspects which retail investors struggle to understand are:

- Many difficult legal concepts such as taxonomy alignment
- The difference between sustainability and sustainability risks
- The difference between sustainability risks and financial risks
- The client's personal understanding of "sustainable" may not be aligned with the legal definitions.

- That there are limited number of products available that corresponds to the legal requirements and can be offered to clients as “sustainable”
- The need for additional information i.e., why the regulator put so much responsibility on the retail client’s knowledge in this area (self-assessment) compared to the suitability where the adviser makes the assessment.
- The amount of time that needs to be spent in an advisory session in relation to sustainability compared to other important issues e.g., risks.

Many SSMA’s members express that the complexity of the EU-rules has the effect of making retail clients less interested in expressing sustainability preferences, which is counterproductive from an ESG-perspective. The requirements contribute to the information overload which already is a problem in MiFID II and which the Commission seeks to address in the context of RIS.

Q3: Are there specific financial education initiatives on sustainable finance developed by consumer associations, trade associations or other organisations and that are used by investment firms that you can bring to ESMA’s attention? Please accompany your reply with any relevant background information on the initiative and/or with details on its effectiveness/usefulness.

The SSMA has contributed to a joint industry initiative in Sweden (together with Investment Fund Association and Insurance Sweden) and developed a so-called one pager which can be provided to retail clients, see attachment.

As mentioned above, SwedSec Licensing also has included sustainability in their licensing tests and yearly knowledge updates.

Q4: What is the main way firms currently provide information to retail clients about sustainable finance?

For example:

• Orally during the meetings with clients

• Through educational brochures or other (paper) documents

• Through dedicated website and apps

• A combination of the above

• Other

In your opinion, are these approaches effective? Please provide details.

A combination of the above.

Retail clients generally consider the ESG disclosures to be complex. Many clients also question why they need to have such detailed understanding in order to be able to invest in ESG-products.

2.2 Sustainability preferences

Firm questionnaires

Q5: What are clients' experiences/reactions to the new questionnaires including questions on "sustainability preferences"? (e.g., do they require guidance to be able to answer to the questions? Do they show interest in the topic?)

Retail client's interest in expressing sustainability preferences at a detailed level may vary depending on the type of retail client and type of investment service. For instance, could be a difference between an existing high net worth client in the private banking segment or corporate client and a new consumer that wants to set up an automatic monthly saving of a small amount. In order to consider these differences, flexibility is very important.

As mentioned under general comments, implementation of the new sustainability rules is still ongoing. Firms as well as their clients are on a journey, and it will take time before things have matured. At present, many clients question the level of information and complexity in the ESG-area.

Q6: Are there practical examples of questions used to collect information from clients on their sustainability preferences that you can share with ESMA? (as for other parts of this CfE, respondents can opt for their input to ESMA not to be made public)

N/A

Q7: Which of the sustainable investment definitions do clients most often opt for? (EU Taxonomy alignment? Sustainable investment within the meaning of SFDR? Consideration of PAI? All of them?) Please provide any statistics, where available.

Generally speaking, most clients find climate easier to understand than other aspects. Exclusion is a well-known strategy to many clients in Sweden.

Q8: How are firms collecting information from clients on their preferences concerning the minimum proportion? With regards to the use of standardised minimum proportions, which standardised minimum proportions are presented to clients?

N/A

Q9: What is approximately the average minimum proportion of sustainable investments requested by clients? Please provide details, where available.

N/A

Q10: Are firms currently able to satisfy the sustainability preferences expressed by clients (in particular in relation to the three categories (Taxonomy, SFDR, PAI))? If so, for which categories and/or types of financial instruments do firms find it most difficult to satisfy clients' preferences?

Taxonomy is most difficult since there is little data available.

Adaptation of client sustainability preferences

As a general comment, adaptation of client's preferences is important since there are not enough products available on the market yet. This is a result of the misalignment between the Taxonomy and other EU-regulations.

The complexity and detail of the legal requirements may also make some investment firms less inclined to promote a financial product as having ESG characteristics i.e., "article 8".

Q11: How often has the adaptation of clients' sustainability preferences been necessary during these first months of application of the rules (e.g., in terms of percentage considering new clients and existing clients whose profiles have already been updated to include information on sustainability preferences)?

N/A

Q12: What kind of operational arrangements have firms put in place to allow clients to adapt their sustainability preferences?

N/A

Q13: How were clients informed about the possibility to adapt their preferences?

N/A

Q14: Have firms imposed limits on how frequently a client can adapt its sustainability preferences during the investment advice?

N/A

Q15: If available: what percentage of those who adapted decided to (1) lower the level of ambition within an option (i.e. reducing the "minimum proportion" or lowering the threshold of sustainable investments in a portfolio), (2) change between the three options (i.e. categories a, b and c) (3) opt for a combination/ for a different combination between the three options (i.e. categories a, b and c) (4) express no sustainability preferences anymore.

N/A

Q16: How often did clients refrain from adapting their sustainability preferences, accepting that the firm could not recommend any financial instruments or invest on their behalf?

N/A

Updating of client profiles

Q17: In relation to the update of clients' profiles:

• Which percentage/average proportion of clients have updated their (MiFID) profiles following the entry into application of the new regime on 2 August 2022?

• On average, taking into account the number of clients whose profile has already been updated, what is the proportion of clients who express sustainability preferences in your firm/jurisdiction?

• On average, taking into account the number of clients who express sustainability preferences, what is the proportion of clients that have expressed a specific preference for one or more of the three categories (Taxonomy, SFDR, PAI) in your firm/jurisdiction? (How many clients are only expressing whether or not they have sustainability preferences i.e., yes, no?).

N/A For individual firms, see result from Finansinspektionens supervisory activity.

3.3 Assessment of suitability

Portfolio approach

Q18: Do you have any comment on the above practical examples?

No comments

Q19: Have firms implemented an approach similar to the one described in examples 1 and 2? If yes, which of the two approaches have firms implemented? If firms have implemented a different approach, please provide further details.

N/A As a general comment, the implantation will depend on many factors e.g., IT solutions. It is likely that there are many more approaches than examples 1 and 2. For individual firms, see result from Finansinspektionens supervisory activity.

Q20: What are the issues that firms encountered in the application of the requirements at portfolio level?

Most important issue is the lack of data. The implementation of legal requirements in SFDR and MiFID II for portfolio management is also unclear.

Consideration of Principal Adverse Impact (PAI) indicators

Q21: How are clients' sustainability preferences gathered on the consideration of PAIs? Do firms refer to the PAI indicators listed in Annex I of the SFDR Delegation Regulation exclusively, or may clients express their preferences based on other PAIs? If clients may express their preferences based on other PAIs: what are those PAIs and how were they identified?

N/A

Q22: May clients determine qualitative elements in order to demonstrate the consideration of PAIs?

• If so, what are these qualitative elements and how were they identified, how is the information on qualitative elements gathered?

• If not, what are the challenges preventing you from offering such possibility to clients? How could these challenges be overcome?

SSMA members considers that it is too early to ask this question.

Q23: What are the issues that firms encountered in the consideration of PAIs from clients?

If PAI are too granular it will be difficult to match with clients' preferences which will lead to adaptations. It is also important to underline that "retail clients" from an implementation and technical perspective is treated as a segment whereas the rules require tailor-made solutions.

Assessment of client preferences when the client expresses preferences for multiple categories

Q24: Does this correspond to practices adopted by firms? If firms have implemented a different approach, please provide further details.

In SSMA's members experience client often express preference for multiple categories which means that the investment firm can select. This is important feature considering the limited number of products available.

The SSMA does not understand the question regarding information and would like to ask ESMA to clarify where this requirement can be found in the legal texts.

Assessment of clients' preferences for groups of natural persons

Q25: How do firms ensure the consistency of the investment advice or portfolio management service provided when conducting suitability assessment with respect to the sustainability preferences expressed by a group of natural persons when no representative has been designated?

To SSMAs understanding the treatment of groups of natural persons follow from internal instructions within the firm as per ESMAs guidelines on suitability (general comment 6). In our view, there is no reason to treat ESG-issues different from other issues e.g., financial risk.

Understanding ESG products

Q26: What approach and criteria have firms adopted for the mapping of products' ESG features in view of their matching with clients' sustainability preferences?

N/A

Q27: How do firms apply sustainability-related concepts of Taxonomy Regulation and SFDR to MiFID II financial instruments that are outside the scope of SFDR (e.g., shares, bonds, certificates, etc.)? How do firms apply the "minimum proportion" concept to such instruments? In particular, how is the "minimum proportion" calculated?

N/A

Q28: Are firms making use of ESG rating/scoring systems for products mapping in terms of sustainability? If yes, please provide details.

N/A

Q29: In case of a positive reply to Q28, how do these interrelate with information gathered from manufacturers (or other sources)?

3.4 Product governance and sustainability

Q30: How are firms, in their capacity as manufacturers and/or distributors, defining the target market for products with sustainability-related objectives, in terms of granularity? Please specify the elements that are defined for this purpose. Do firms adopt one single approach for all products, irrespective of whether they are in scope of SFDR? In case approaches differ, please explain why and how.

N/A

Q31: What are the factors that firms, in their capacity as manufacturers and/or distributors, would consider for the periodic product reviews with respect to sustainability-related objectives?

N/A

Q32: How are firms, in their capacity as distributors, collecting relevant information from manufactures on sustainability-related objectives of the target market? Is the information received from manufacturers sufficient, or are firms considering other inputs? If so, please explain why and describe such additional inputs.

N/A

Q33: How are firms, in their capacity as manufacturers and/or distributors, treating products that do not consider sustainability factors in their product governance processes, specifically concerning the target market assessment related to the sustainability-related objectives (e.g., are sustainability-objectives considered in the negative target market assessment for such products? If so, please explain how).

N/A

3.5 Other

Retail investors' demand of financial instruments with sustainability features and availability of products

Q34: Have firms noticed increased demand by clients of financial instruments with sustainability features? Please provide any relevant available statistics on this topic (e.g., percentage of clients asking information about these products; trends over time). Furthermore, please explain if factors such as age, gender, level of education or level of income/wealth play a role in the demand for financial instruments with sustainability features.

N/A
As a general comment, it would be very difficult to prove the causality i.e., the reason for any increase/decrease. One factor is noted on the Swedish market, which is that women are more like to prioritize sustainability than men. (See report by Finansinspektionen: https://fi.se/contentassets/9672d1b754ec4755b4510faced841936/pm-hush-ekonomi-finansiella-formaga.pdf (Available in Swedish lanuage only)

Q35: Which percentage of products in firms' offering have sustainability features? Please provide breakdowns and details, where available. Are retail clients satisfied with the availability of products with sustainability features (number, type, characteristics)?

N/A

Q36: Are firms facing specific issues related to data availability/data quality with respect to financial instruments with sustainability features? If yes, how are firms dealing with these issues?

Taxonomy is an issue since this regulation is in another phase.
It is also an issue that not all firms use the EET files which means own estimates need to be done.

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