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ESMA

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Transmitted via web-upload: www.esma.europa.eu

Call for evidence

Impact of the inducements and costs and charges disclosure requirements under MiFID II

17 July 2019 | ESMA35-43-1905

Dear Sir, dear Madam,

the Bundesverband der Wertpapierfirmen e.V. (bwf) is a trade association representing the common professional interests of securities trading firms, market specialists at the securities exchanges and various other investment firms throughout Germany. In this capacity, we expressly welcome the possibility to comment on ESMA's Call for evidence - Impact of the inducements and costs and charges disclosure re-quirements under MiFID II.

However, since the vast majority of bwf member firms are active in the securities wholesale-market only, we will limit our answers to questions related to the application of the MiFid II costs and charges disclosure requirements in situations where investment services are provided to professional clients and eligible counterparties.

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.

According to the unanimous perception of our members and their professional clients and eligible counterparts, the costs and charges disclosure requirements have not proven successful for them and are regarded to be completely inappropriate and needless for institutional, non-retail clients.

your reference

your message of

city_date

Frankfurt/Main, 06.09.2019

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The main task of the cost transparency rules is to protect investors and to provide them with the relevant information in order to make informed investment decisions or to review them afterwards. Taking into account the volume and structure of business and trading frequency in the wholesale market, MiFID II provisions related to costs and charges disclosure are – even under the relieved conditions applicable to these types of clients – usually not reasonably practicable, sometimes even technically impossible to fulfil and do not create any demonstrable benefit.

Institutional clients have the expertise and the necessary sources of information (or they are able to negotiate an appropriate mechanism of information provision) to make informed and responsible investment decisions. Accordingly, they do not need and equally important, they do not want this form of “protection” which is not considered helpful but de facto hindering established business processes. Therefore, they should not be forced under a regime which for them is burdensome and useless at the same time.

To say it pointedly, from the perspective of the service provider and their professional clients and eligible counterparts alike, the costs and charges disclosure requirements are perceived as a typical “*solution is looking for a problem*” piece of regulation.

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.

For the reasons provided in our answer to question “I” we would like to emphatically urge legislators to erase the costs and charges disclosure provisions for professional clients and eligible counterparties completely in the course of the MiFID II review. If no political consensus could be obtained then at least the group of eligible counterparties should be exempt completely while other non-retail clients should be given the possibility to “*opt out*”.

Yours sincerely,

Michael H. Sterzenbach
Secretary General