

ESMA consults on appropriateness and execution-only under MiFID II

These requirements constitute an important element of investor protection in the provision of investment services other than investment advice or portfolio management. Under MiFID II, investment firms, providing non-advised services are required to request information on the knowledge and experience of clients or potential clients to assess whether the investment service or product envisaged is appropriate, and to issue a warning in case the investment service or product is deemed inappropriate. The execution-only framework allows for an exemption to this assessment in certain conditions, including that the firm issues a warning to the client.

This Consultation Paper builds on relevant parts from ESMA's Guidelines on certain aspects of the MiFID II suitability requirements, while adjusting these to the appropriateness and execution-only framework. In addition, it takes into account the insights of supervisory activities conducted by national competent authorities (NCAs) on the application of the appropriateness and execution-only requirements, in particular resulting from the 2019 common supervisory action (CSA) on appropriateness. This CSA showed that there was insufficient convergence in the understanding and application of several areas of the appropriateness and execution-only requirements by firms in different Member States, and often within Member States themselves, creating problems for achieving a consistent level of investor protection in the EU.

Next steps

ESMA invites feedback from interested stakeholders on the proposed guidelines by 29 April 2021 and will consider this feedback with a view to issue final guidelines in Q3 2021.