



Commission de Surveillance
du Secteur Financier

Circular CSSF 23/835

Application of the
Guidelines of the European
Securities and Markets
Authority on certain
aspects of the MiFID II
suitability requirements

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Re: Application of the Guidelines of the European Securities and Markets Authority on certain aspects of the MiFID II suitability requirements

Luxembourg, 16 May 2023

To all investment firms, credit institutions, UCITS management companies and external alternative investment fund managers authorised to provide the services of investment advice or portfolio management

Ladies and Gentlemen,

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, will apply the Guidelines of the European Securities and Markets Authority (ESMA) on certain aspects of the MiFID II¹ suitability requirements (ESMA35-43-3172) (the "Guidelines") from 3 October 2023 onwards. The CSSF will integrate the Guidelines, issued with a view to promoting supervisory convergence in this field at European level, into its administrative practice and regulatory approach.

1. The Guidelines

The Guidelines are issued by ESMA in accordance with Article 16(1) of the ESMA Regulation². The purpose of the Guidelines is to clarify the application of certain aspects of the MiFID II suitability requirements in order to ensure the common, uniform, and consistent application of Article 25(2) of MiFID II³ and of Articles 54 and 55 of the MiFID II Delegated Regulation⁴.

The Guidelines are attached to this circular and are available on ESMA's website (https://www.esma.europa.eu/sites/default/files/2023-04/ESMA35-43-3172_Guidelines_on_certain_aspects_of_the_MiFID_II_suitability_requirements.pdf).

2. Scope of application

These guidelines shall apply to investment firms (as defined in Article 4(1)(1) of MiFID II⁵) and credit institutions (as defined in Article 4(1)(27) of MiFID II⁶) when providing the investment services (within the meaning of Article 4(1)(2)

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as amended

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), as amended

³ Article 37-3(4) of the Law of 5 April 1993 on the financial sector, as amended

⁴ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as amended

⁵ Article 1(9) of the Law of 5 April 1993 on the financial sector, as amended

⁶ Article 1(12) of the Law of 5 April 1993 on the financial sector, as amended

of MiFID II⁷) of portfolio management or investment advice, or when selling or advising clients in relation to structured deposits, and to UCITS management companies (as defined in Article 2(1)(b) of the UCITS Directive^{8,9}) and external alternative investment fund managers (as defined in Article 5(1)(a) of AIFMD^{10,11}) when providing the services of individual portfolio management or investment advice referred to in Article 6(3)(a) and (b)(i) of the UCITS Directive¹² and Article 6(4)(a) and (b)(i) of AIFMD¹³ respectively.

3. Date of application

The Guidelines and this circular shall apply from 3 October 2023 onwards. The previous ESMA guidelines on this topic¹⁴ will cease to apply on the same date.

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Annex: ESMA Guidelines on certain aspects of the MiFID II suitability requirements

⁷ Article 1(30) of the Law of 5 April 1993 on the financial sector, as amended

⁸ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended

⁹ Management companies incorporated under Luxembourg law and subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended

¹⁰ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, as amended

¹¹ Article 1(49) of the Law of 12 July 2013 on alternative investment fund managers, as amended

¹² Article 101(3)(a) and (b), first indent of the Law of 17 December 2010 relating to undertakings for collective investment, as amended

¹³ Article 5(4)(a) and b(i) of the Law of 12 July 2013 on alternative investment fund managers, as amended

¹⁴ ESMA35-43-1163



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