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The Netherlands' proposals to stimulate long-term retail investments by reducing unnecessary administrative burdens while maintaining a high-level investor protection

During the negations on the Retail Investment Strategy (RIS), the Netherlands has consistently advocated for establishing a robust and effective retail investor protection framework within the European Union and greatly supported the goal of increasing retail investments in the EU economy. Considering the recent focus on the simplification of the consumer journey and the reduction of unnecessary and ineffective administrative burdens for investments firms, we propose several measures that could reduce the administrative burden while maintaining a high-level of investor protection within the MiFID II context. Based on our (supervisory) experience, we have identified evidently burdensome requirements for firms that may not effectively protect investors and even work as a barrier to entry to investing. In this non-paper, moreover, we argue why it is essential for meeting the RIS' goals that the scope of Product Oversight and Governance (POG) requirements is maintained.

Crucially, any proposal aimed at simplifying the regime must adhere to two fundamental principles: i) it should have real effects in terms of lowering the regulatory burden for firms or simplifying the customer journey, without ii) undermining the level of investor protection currently offered by MiFID II. We believe the proposals outlined in this non-paper achieve that objective. Ideas that are circulating on reducing the current POG scope would increase the likelihood of mis-selling and, ultimately, undermine trust in the financial sector. We do instead offer one simplification of POG requirements for corporate issuers.

We have outlined the following proposals, which we will expand in the Annex:

1. maintaining the current POG scope to avoid mis-selling;
2. simplifying POG requirements for corporate issuers;
3. introducing a simplified suitability regime;
4. simplifying the suitability statement when providing investment advice;
5. simplifying the appropriateness assessment in non-advised services;
6. introducing the principle of layering information for disclosure purposes;
7. removing the illustration of cumulative impact of costs on returns; and
8. removing the 10%-depreciation obligation.

These concrete suggestions for 'smart' burden reduction and simplification will decrease the administrative burden while keeping consumer protection at a solid level.

ANNEX

1. Maintaining the current POG scope to avoid mis-selling

We emphasise that proposals to limit the scope of the Product Oversight and Governance (POG) requirements raise significant concerns. One example of such a proposal would be to restrict the scope to complex products in the meaning of Article 25(4) MiFID II, thereby excluding non-complex products. Such a proposal significantly undermines investor protection, because there are also products that qualify as non-complex under MiFID II, but that do carry a risk of mis-selling. By removing the category of non-complex products from the scope of product governance altogether, there is a high risk that some products may be offered widely, while they do have a small target market. Think, for example, of SPACs or certain MTF stocks or certain high-yield bonds.

Another undesirable way of restricting the POG scope would be to exclude non-advised products and services. This is precisely where the POG rules benefit retail investors the most. If investment firms comply with the POG requirements, retail investors can invest relatively safe, also without a financial advisor. The POG requirements are, after all, intended to ensure that financial products demonstrably benefit the target market and are distributed accordingly.

A reduced POG scope will harm retail investors' trust in financial markets and undermine the goal of increasing EU citizens' investments in the EU economy. Moreover, a reduced scope will not meaningfully alleviate administrative burden for firms because the current POG norms already provide for proportionality. This means that simpler (e.g., shares listed on main indices, regular ETFs, or investment grade, plain vanilla bonds) require, for example, less extensive product testing and scenario analyses.

2. Simplifying POG requirements for corporate issuers

While in general we see POG as the cornerstone for investor protection and effective conduct supervision, we do see a specific POG requirement that can be simplified. Firms that advise corporate issuers on the launch of new products (e.g., IPOs) must comply with the product governance requirements, including the obligation to review the identified target market for the products at stake. The industry has longstanding concerns about this requirement, arguing that it does not fit well with the economic practice of such advice, which is one-off, without longer-term commitments/responsibilities. By removing the review obligation in such situations, we would ease their burden without harming investor protection.

3. Introducing a simplified suitability regime

A key opportunity for burden reduction is the simplification of the customer journey. Firms have expressed concerns that onboarding processes may have become too lengthy. We agree in certain situations processes can be too extensive, discouraging prospective clients from otherwise beneficial investment choices. This risk is particularly pertinent when conducting a suitability assessment in a digital environment, where firms must balance keeping a prospective client's attention (i.e., ensuring the assessment is not too lengthy) and complying with legal requirements (e.g., collecting information about the prospective client's financial situation).

When it comes to the suitability assessment, we have identified several avenues for simplification. The most impactful, in our view, is the introduction of a simplified suitability regime, in addition to the full regime currently in place. Under the right conditions, a simplified suitability regime will in many instances greatly streamline the customer journey for advised services, without jeopardizing investor protection. Indeed, we see that most retail investors do not have a specific investment objective - such as a pension- or mortgage-related objective - and invest a relatively modest share of their total income/capital. For such clients, we believe that it is not necessary for comprehensive information to be requested on the client's financial position as currently required. Additionally, the required information regarding the client's knowledge and experience can be reduced by restricting this simplified suitability regime to certain simple, cost efficient and well-diversified products (preferable to products eligible for the basic product label, if introduced).

We are aware that the Commission proposal on the RIS already included a simplified suitability regime, which we support. This proposal, however, only removes the requirement to request a client's information on knowledge and experience, while we believe the information on the client's financial situation can also be limited. This would more meaningfully simplify the questionnaire for prospective clients and therefore reduce burdens for firms. Moreover, we propose adding extra safeguards as outlined above to exclude more complicated client situations.

4. Simplifying the suitability statement when providing investment advice

We also see opportunities to simplify the requirement for the so-called 'suitability statement' when providing investment advice. This statement should currently be provided to the client before every advice. In our view, the statement can also be provided at the start of the relationship, forming the basis for the firm's recommendations. An updated statement should be provided when a review is required.

5. Simplifying the appropriateness assessment in non-advised services

We also see some opportunities for simplification regarding the appropriateness requirements, in the context of non-advised services, by no longer requiring firms to obtain information on the client's profession and education. Based on our experience, this is information is not relevant for determining whether a client possesses the necessary knowledge and experience of the investment service/product at hand. Furthermore, in our experience, said information is not actually used by firms to determine whether a client possesses the necessary knowledge and experience.

6. Introducing the principle of layering information for disclosure purposes

In terms of disclosures, we see opportunities for improvement. In particular, we see the following possibilities: introducing the principle of layering information. In this way, disclosures can be more tailored to the client's needs: in the first instance, clients will see the most important information in summarized form, and if they wish, more detailed information can be shown by clicking on certain words/tabs.

7. Removing the illustration of cumulative impact of costs on returns

We also see room for simplification of the cost-transparency requirements by removing the obligation to provide an illustration about the cumulative impact of costs on return to the client. While beneficial in principle, the work that has been done in the technical standards to implement this has not resulted in an illustration that would actually help clients understand the cumulative impact on returns. The illustrations provided by firms in required disclosure documents do not provide meaningful added value for the client that justifies this requirement. Removing this requirement, while retaining the numerical cost and charges information, would simplify one of the major areas of confusion for firms when it comes to cost transparency.

8. Removing the 10% depreciation obligation

Another disclosure simplification could be achieved by removing the so-called 10% depreciation obligation. Firms are required to notify clients whenever their portfolio value decreases by 10% or more. While there can be arguments in favor of this requirement (e.g. it may facilitate discussions between clients and firms), it has always attracted a lot of criticism by the industry and there may be some truth in the argument that it may only create fear amongst clients in bear markets, which may not lead them to make sensible investment decisions. It could, for example, stimulate 'panic selling' by retail investors.