

**ASSESSING SUITABILITY:****Pitfalls and Solutions for Life Insurers and Private Bankers**

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In January 2011, the UK's Financial Services Authority (FSA) published its proposed guidance on Assessing Suitability. This drew on a number of thematic reviews and investigations between March 2008 and September 2010 and identified significant risks to consumers arising from unsuitable personal recommendations by financial advisers and unsuitable investment selections by discretionary investment managers.

The FSA's rules for assessing suitability are taken directly from the MiFID Directive.<sup>1</sup> Obviously, the FSA's jurisdiction does not extend to Luxembourg firms; however, it is an influential European regulator and its recent guidance consultation is both informative about good and bad practice and likely to be read and taken into consideration by the CSSF.

In this article, we share some of the lessons that can be drawn from the review recently conducted by the FSA.

Suitability is an extremely important current issue and the FSA is extremely concerned about the level of failures observed. The FSA has taken a number of other enforcement actions. Firms operating in other EEA jurisdictions should take on board the FSA's observations and ensure that their practices properly reflect the MiFID requirements so that they are able to proactively address any shortfalls before they face regulatory intervention along the lines seen in the UK.

While no single approach will be appropriate for the vast array of firms offering investment advice and management, firms should review the FSA's findings in the context of their own business models and consider whether they need to improve the way they assess suitability.

<sup>1</sup> The Commission Directive 2006/73/EC, article 35 states "...the information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment"...