3 August 2021

Public consultation on a retail investment strategy for Europe

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation_en

Question 1.3

Yes/no/don't know

The response to this question is a joint statement by the following companies operating stock exchanges throughout Germany:

- Baden-Württembergische Wertpapierbörse GmbH (Börse Stuttgart),

- Bayerische Börse AG (Börse München),

- BÖAG Börsen AG (Börse Düsseldorf, Börse Hamburg und Börse Hannover),

- Börse Berlin AG (Börse Berlin),

- Deutsche Boerse Group

Together with

- Bundesverband der Wertpapierfirmen e.V. (bwf, Federal Association of Securities Trading Firms)

There are observable regulatory obstacles preventing retail investments in listed instruments such as shares, bonds, and low-cost ETFs, which should be removed. For instance, retail investors' access to corporate or bank bonds is increasingly limited by regulation. In particular, corporate bonds with no other embedded derivative than a "make-whole" clause despite being considered as "safe and simple products that are eligible for retail clients", as it is stated in recital 4 of the recently adopted MiFID II amendments (the so-called MiFID II "quick fix"), are still de facto inaccessible for retail investors because of a remaining uncertainty among market participants, since it has not been clarified yet, that these "safe and simple" products are consequently not considered anymore to be "packaged" retail investment product (PRIIPs).

An analysis conducted by Börse Stuttgart in April and December 2019, could demonstrate that around 4/5 of corporate bonds listed at Börse Stuttgart could not be traded by retail investors anymore[1]. As a result, trading volumes of these instruments have dropped significantly and have remained at comparably very low levels ever since. Furthermore anecdotal evidence by all exchanges supporting this statement confirm that the results have been practically the same across trading venues.

This de facto inclusion of classic bonds in the PRIIPs regulation result from (informal) comments by Commission members in the past and by the consequently increasing number of bond issues availing of the wholesale bond regime with reduced prospectus requirements. The same applies to provisions for product governance defined in the "Guidelines on MiFID II product governance requirements" which also results in limited access by retail investors. Consequently, these bonds cannot be accessed by retail investors unless the issuer of the bond publishes a KID. However, this is not realistic as the issuers of these corporate bonds are:

- Non-European firms which do not explicitly market their bonds to European retailers and therefore do not publish a KID in Europe, or

- European firms which do not want to take the risk associated with the publication of a KID. The industry standard is that issuers sell their bonds to their bank consortium and have no further interest in the reselling of these bonds by the banks in particular to retailers.

The German regulator BaFin also noted in a recent report that by the de facto introduction of the KID requirement, there has been a significant decline in trading of corporate bonds in the German market [2].

Beside the KID, the tradability of corporate bonds is further limited by the MiFID II “target market” provision. Often a target market is defined for corporate bonds that does not include retail investors. The recently adopted MiFID II “quick fixed” has formulated favourable exceptions for bonds with a make whole clause. Thus, we call on the EU Commission to remove existing inconsistencies in the assessment of corporate bonds and to align the PRIIPs regulation to the amendments made in the MiFID II “quick fix” by a clarification that bonds with no other embedded derivative as a “make whole” clause are no longer considered to be PRIIPs. Accordingly, the legislator should extend the relief for simple investment products to all bonds without an embedded derivative.

Furthermore, a review of the pension legislation, both at national (2nd and 3rd pillars) and EU levels (e.g. PEPP proposal and pension funds rules) is necessary to foster access of pension savers to these products. Employee share ownership should be promoted to foster an equity culture in Europe. Financial incentives, e.g. tax breaks, should be promoted to enable long-term direct investment.

Therefore, the contributors to this joint statement urge the EU Commission to carefully review existing provisions and remove these barriers which prevent retail investors from accessing simple financial products such as corporate bonds. Concerning the scope of the PRIIPs regulation, we hoped that the issue of the (non-)tradability of corporate bonds would have been addressed more directly in this consultation paper.

[1] https://www.boerse-stuttgart.de/-/media/files/gruppe-boerse-stuttgart/pressemitteilungen/de/2020/boerse-stuttgart_white-paper-brse-stuttgart_tradability-of-corporate-bonds.ashx

[2] See BaFin Journal, April 2021, p. 32ff. https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_node.html