

# MiFID, Investor Protection and Level Playing Field

EFMLG 50<sup>th</sup> meeting

October 2014

A decorative horizontal bar at the bottom of the slide, consisting of several horizontal stripes of varying shades of blue, from dark to light, creating a gradient effect.

# 1. Background

## Article 4 Directive 2006/73

- **MS may exceptionally retain or impose additional requirements** where objectively justified and proportionate **to address specific risks to investor protection or market integrity if:**
  - risks are of importance in market structure of MS, or
  - risks become evident afterwards and not otherwise regulated
- **MS shall:**
  - notify EC
  - 1 month in advance
  - justify

## Article 24.12

### MIFID 2

- **Same requirements**, but limited to Article 24 and 2 months of prior notice, instead of 1
- **MS may retain additional requirements** that were **notified to the EC in accordance with Article 4** of Directive 2006/73/EC before 2 July 2014 **provided that the conditions laid down in that Article are met**

## PURPOSE of both Articles

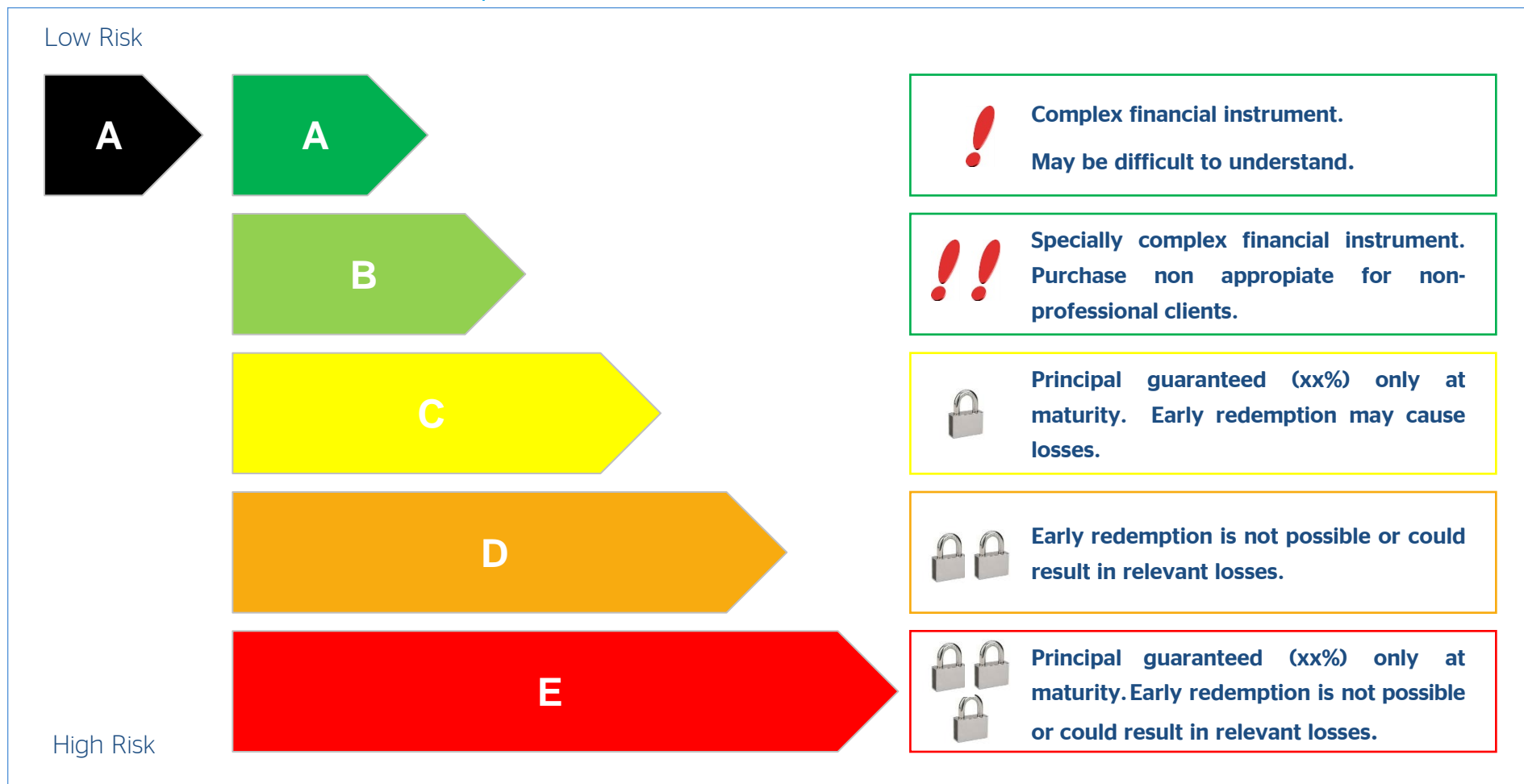
- **Level playing field**
- **Disclosure and approval** of any requirement that could impair level playing field

## 2. The Spanish Case

<p><b>Origin</b></p>	<p>→ <b>“Participaciones preferentes”</b> (preference shares) <b>sold to retail investors by banks in trouble</b></p>
<p><b>Amendment of Spanish Securities Markets Law</b></p> <p><i>(Nov 2012)</i></p>	<p>→ <b>For complex instruments, hand writing statement</b> by the client <b>representing that, if such is the case:</b></p> <ul style="list-style-type: none"> <li>• Instrument is not appropriate</li> <li>• It was not possible to evaluate appropriateness</li> </ul> <p>→ <b>Test</b> to be made <b>in writing</b> and given to the client</p> <p>→ <b>Register of non-appropriate product per client</b></p>
<p><b>Circular 3/2013 of CNMV</b></p> <p><i>(July 2013)</i></p>	<p>→ <b>For retail</b> and professional clients (afterwards limited to non-direct professional)</p> <p>→ <b>Where non-investment advise service is provided in relation to a complex product, and a notice of “non advice” is in the document</b></p> <p>→ <b>Hand written statement:</b></p> <p><i>“I have not been adviced in this transaction”</i></p>

# 3. Recent CNMV Consultation for Classification of Complex Products and Identification of Specially Complex Products

## 3.1. Classification of Complex Products



### 3.1. Classification of Complex Products (II)

**Class A**

Euro financial instruments with a compromise of capital return in an equal or inferior period of 3 years. The issuer has a minimum rating as of the Kingdom of Spain.

**Class B**

Class A financial instruments with a period up to 10 years (inclusive) and a minimum rate of investment grade.  
Class A FX financial instruments in an equal or inferior period of 3 years and a minimum rate of investment grade.

**Class C**

Euro financial instruments with a compromise of capital return equal or superior to its 90% in an equal or inferior period of 3 years. The issuer has a minimum rating of investment grade.  
Financial instruments with a compromise of currency capital return in a period superior to 3 years. The issuer has a minimum rating of investment grade.

**Class D**

Other instruments except those of class E.

**Class E**

Derivatives.

## 4. Other cases in other Member States

<p><b>Notified to Commission</b></p>	<table border="0"> <tr> <td data-bbox="530 268 654 301"></td> <td data-bbox="706 268 893 301"><b>Netherlands:</b></td> <td data-bbox="1027 268 1891 358"><b>2 notifications, one banning inducements in relation to the provision of services to retail, and the other one in Dutch.</b></td> </tr> <tr> <td data-bbox="530 325 654 358"></td> <td></td> <td></td> </tr> <tr> <td data-bbox="530 389 654 475"></td> <td data-bbox="706 389 955 429"><b>United Kingdom:</b></td> <td data-bbox="1027 389 1763 579"><b>7 notifications:</b> <ul style="list-style-type: none"> <li>• banning platforms from receiving rebates</li> <li>• use of dealing commissions</li> <li>• client assets</li> <li>• safe custody asset</li> </ul> </td> </tr> <tr> <td data-bbox="530 596 654 682"></td> <td data-bbox="706 596 820 629"><b>France:</b></td> <td data-bbox="1027 596 1379 629"><b>3 notifications (in French).</b></td> </tr> <tr> <td data-bbox="530 725 654 811"></td> <td data-bbox="706 725 851 758"><b>Germany:</b></td> <td data-bbox="1027 725 1390 758"><b>1 notification (in German).</b></td> </tr> <tr> <td data-bbox="530 853 654 939"></td> <td data-bbox="706 853 820 886"><b>Ireland:</b></td> <td data-bbox="1027 853 1891 943"><b>5 notifications (mainly in requirements regarding client money rules).</b></td> </tr> </table>		<b>Netherlands:</b>	<b>2 notifications, one banning inducements in relation to the provision of services to retail, and the other one in Dutch.</b>					<b>United Kingdom:</b>	<b>7 notifications:</b> <ul style="list-style-type: none"> <li>• banning platforms from receiving rebates</li> <li>• use of dealing commissions</li> <li>• client assets</li> <li>• safe custody asset</li> </ul>		<b>France:</b>	<b>3 notifications (in French).</b>		<b>Germany:</b>	<b>1 notification (in German).</b>		<b>Ireland:</b>	<b>5 notifications (mainly in requirements regarding client money rules).</b>
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## 5. Conclusion

1

**Disparity at national legislation level**

2

**Unlevel-playing field**

3

**Lack of legal certainty**

4

**Lack of common financial market**



CORPORATE  
& INVESTMENT BANKING

