ESMA_QA_1125

Submission Date
06/11/2020

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Product governance

Subject Matter
Product governance

Question
How should firms manufacturing financial instruments ensure that the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand as required by Article 9(12)(c) of the MiFID II Delegated Directive?

ESMA Answer

06-11-2020

Original language

[ESMA35-43-439 Investor protection, Product governance Q&A 4]

Target clients should be able to access and choose the product(s) that best serve their needs, objectives and characteristics by assessing all relevant costs and benefits of the product(s). Therefore, during the product design phase the firm should ensure that the charging structure of the product is not opaque, hard to assess or designed to mislead clients and to exploit behavioural biases. For example, ESMA expects firms to:

- Ensure that artificially low initial rates/costs are not used to attract and mislead unsophisticated clients.
- Avoid the use of unnecessarily complex formulas for the determination of costs.
- Avoid too many cost components or unnecessarily splitting cost components in too many elements if this reduces clarity.
- Consider, in cases where the cost structure is particularly complex, the possibility of some form of testing of the cost disclosures to ensure that these are not too complex to understand based on the characteristics of the target clients.
- Assess whether there is no duplication of costs (e.g. the same type of fee is not included in two different cost categories) and ensure that costs are properly separated and accounted for.

The above list of examples is not exhaustive and firms could use other means to ensure an appropriate level of transparency of products' charging structure.