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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

Are all bonds embedding a make-whole clause exempt from the MiFID II product governance requirements?

ESMA Answer

19-11-2021

Original language

[ESMA35-43-439 Investor protection Product governance According to Article 16a of MiFID II, “an investment firm shall be exempted from the requirements set out in the second to fifth subparagraphs of Article 16(3) and in Article 24(2), where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties”. This means that the mere presence of a make-whole clause is not sufficient for a financial instrument to be exempt from the MiFID II product governance requirements.

Below is a list of practical examples based on Article 16a of MiFID II.

Example	Target market (type of clients category)	Subject to MiFID II product governance requirements?
Bonds without embedded derivatives (i.e. ‘plain vanilla’ bonds)	Retail and/or professional clients	Yes
Bonds with one or more embedded derivatives without a make-whole clause	Retail and/or professional clients	Yes
Bonds with a make-whole clause and no other embedded derivative	Retail and/or professional clients	No

Bonds with one or more embedded
derivatives AND a make-whole
clause

Retail and/or
professional clients

Yes

All bonds

Only eligible
counterparties (as final
clients)

No