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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

Level 2 Regulation
Directive 2017/593 - MiFID II Delegated Directive

Level 3 Regulation
ESMA35-43-620 - Guidelines - Product governance (MiFID)

Topic
Product governance

Additional Legal Reference
Commission Delegated Directive (EU) 2017/593, Articles 9(9) and 10(2)

Subject Matter
Integration of sustainability within the MiFID II product governance requirements

Question
When conducting the negative target market assessment for a product that does not consider sustainability factors, should a firm also consider any clients' sustainability-related objectives the product is not compatible with?

ESMA Answer

02-10-2023

Original language

Response provided by the European Commission:

Yes. According to Article 9(9) and 10(2) of Commission Delegated Directive 2017/593, any clients' sustainability-related objectives shall be considered when specifying the type(s) of clients whose needs, characteristics and objectives the product is compatible with ('positive target market assessment'). This also applies to the identification of any group(s) of clients whose needs, characteristics and objectives the product is not compatible with ('negative target market assessment'). In practical terms, whether, and if so, which sustainability-related objectives may be relevant for the identification of the negative target market for a particular product that does not consider sustainability factors, will depend on the characteristics of the product. Indeed, firms are required to consider whether the product would be incompatible with some sustainable related objectives but this evaluation might conclude, in some specific situations, that there is no incompatibility with those objectives, so no negative target market would be determined in those specific situations for the criterion "sustainability related objective". Reversely, in other situations the consideration should lead to the identification of a negative target market in relation to the product's sustainability-related objectives.

Status of the answers provided by the European Commission: *The answers provided by the European Commission are provided pursuant to Article 16b(5) of Regulation 2010/1095 to clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.*