



Chambre Nationale  
des Conseillers  
en Investissements  
Financiers

The Chambre Nationale des Conseillers en investissements Financiers ("CNCIF") is pleased to answer to the European Security and Market Authority Consultation Paper on MIFID II Product Governance Requirements.

### **Response to Consultation Paper questions**

**Q1: Do you agree with the list of categories that manufacturers should use as a basis for defining the target market for their products? If not, please explain what changes should be made to the list and why.**

The CNCIF broadly agrees with the list of six categories that manufacturers should use as a basis for defining the target market for their products. However, we estimate that the proposals are too far-reaching in some aspects while other aspects require further specification and/or changes.

First of all, the CNCIF estimates that the proposed approach ("*ESMA believes that the above-mentioned six categories should form **the minimum basis** for the target market assessment*" (...))" is too rigid and should be considered with the proportionality principle set out in Level 2 directive dated 7 April 2016. Such approach would need to also take into account product-specific features.

Furthermore, the categories clients' "objectives" and clients' "needs" are difficult to separate as they are strongly interconnected. We recommend they are jointly considered as one category.

**Q2: Do you agree with the approach proposed in paragraphs 18-20 of the draft guidelines on how to take the products' nature into account? If not, please explain what changes should be made and why.**

The CNCIF agrees that the target market assessment should be done in an appropriate and proportionate manner, considering the nature of the product.

We appreciate that the target market will be identified with less detail for simpler products such as ordinary shares but we would also appreciate to be provided with more examples and/or an indicative list of "non-complex products" (ex: non-complex UCITS funds). In any case, we assume that ESMA refers to non-complex financial instruments according to Article 25.4 of Directive MIFID II.



**Q3: Do you agree with the proposed method for the identification of the target market by the distributor?**

The CNCIF shares the view that there is a distinction between the manufacturer's and the distributor's perspectives to define the target market. Indeed, manufacturers focus on the product features whereas distributors mainly consider the services provided to their clients.

However, the CNCIF considers that distributors should benefit from more flexibility in defining the target market as they are in direct contact with their client base. For example, we suggest considering the six categories provided for the manufacturers as optional indicators to be taken into account by distributors. The principle of proportionality should apply to distributors in this regard.

Moreover, further clarification would be helpful on how the distributor's target market assessment is based on the nature of the financial instrument distributed. For instance, ESMA only refers to the principles which were "described in paragraphs 18 to 20" of the Consultation Paper. We recommend further differentiation between the identification of the target market by the distributor and the manufacturer.

Finally, ESMA indicates that the manufacturers "*should also specify the preferred acquisition channel (face-to-face, via telephone, online) and the specific design of the acquisition channel, if relevant.*" We believe that it would be more appropriate and suitable for the distributors to define the distribution channels themselves rather than using the manufacturer's guidelines.

**Q4: Do you agree with the suggested approach on hedging and portfolio diversification aspects? If not, please explain what changes should be made and why.**

The CNCIF agrees that personal features of clients may, in certain cases, lead to deviations between general target market identification and the individual eligibility of the client.

However, we strongly disagree with the fact that the inclusion of a product with a higher risk profile than the client's overall risk tolerance "*should not occur on a regular basis*" for the following reasons:

- We consider that such deviations **must** regularly happen to construct a well-diversified portfolio. Diversification and/or hedging cannot constitute an exception.

It would be very counterproductive if distributors were to be discouraged from recommending investments because of the manufacturer's target market definition, even in cases where the proposed investment would reduce the risk of the client's overall portfolio and/or would satisfy the client's best interests.



- In any case, we believe that a clarification is needed on the concept of “*regular basis*”.

Finally, we note that this discussion features only in the Consultation Paper and is not mentioned in the Guidelines. We strongly recommend hedging and portfolio diversification to be featured in the final Guidelines themselves.

**Q5: Do you believe further guidance is needed on how distributors should apply product governance requirements for products manufactured by entities falling outside the scope of MiFID II?**

The CNCIF believes that distributors will require information from non-MiFID entities (such as UCITS management companies and AIFMs) in order to serve their own target markets.

We also consider that paragraphs 51 and 52 of Annex 3 are sufficient in explaining that a non-MiFID firm should not have to enter into agreements with their distributors that impose on them the product governance obligations. We consider it important that ESMA confirms in paragraph 31 that MiFID distributors are under no obligation to provide sales information to non-MiFID manufacturers.

Finally, we believe that further guidance is needed on how distributors should apply product governance requirements for products manufactured by entities falling outside the scope of MiFID II which are simple and common in nature.

**Q6: Do you agree with the proposed approach for the identification of the ‘negative’ target market?**

Yes, but we consider that simpler non-complex products designed for the mass retail market (ex: UCITS funds) are unlikely to have a negative target market.

**Q7: Do you agree with this treatment of professional clients and eligible counterparties in the wholesale market?**

The CNCIF agrees that there is a clear difference between the products aimed at retail clients and those aimed at professional investors or eligible counterparties. This difference must be correlated to a reasonable and proportionate approach towards professional clients.

**Q8: Do you have any further comment or input on the draft guidelines?**

We have no comments.



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**Q9: What level of resources (financial and other) would be required to implement and comply with the Guidelines (market researches, organisational, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training. When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.**

The costs entailed by the proposed guidelines might be very significant. However, such costs are difficult to quantify at this stage.