

PRESS RELEASE

ESMA consults on product governance guidelines to safeguard investors

The European Securities and Markets Authority (ESMA) has opened a consultation on product governance guidelines under the Markets in Financial Instruments Directive (MiFID II) regarding the target market assessment by manufacturers and distributors of financial products.

The requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. These requirements cover arrangements for:

1. firms to adopt when manufacturing products (product governance obligations for manufacturers); and
2. firms to adopt when deciding the range of products and services they intend to offer to clients and when offering or recommending such products to clients (product governance obligations for distributors).

The product governance requirements set out in MiFID II cover a broad range of topics, both product and process related. ESMA has decided to develop draft guidelines which mainly address the target market assessment, as this was identified as the most important element for ensuring the common, uniform and consistent application of the new framework and there was a strong demand from stakeholders to ESMA to clarify how the new requirements should be implemented and applied.

Steven Maijor, ESMA Chair, said:

“The financial crisis has revealed many instances where the rules on selling investment services to retail customers failed to ensure that firms acted in their clients' best interest.

“One of the objectives of MiFID II is to increase the level of investor protection by obliging firms to take responsibility for products throughout their lifecycle, and preventing firms own interests and commercial or funding needs from prejudicing their clients' interest.

“These proposed Guidelines will help establish consistent, efficient and effective supervisory practices on the target market assessment, which is important, given the fact that implementing the target market assessment into market participants internal processes and procedures is complex and will benefit from guidance.

“The consistent implementation and application of MiFID II’s requirements on product governance will increase investor protection across the European Union.”

Proposed Guidelines on MiFID II product governance requirements

National competent authorities should supervise firms’ compliance with their obligations under MiFID II. ESMA believe these guidelines will assist firms in meeting these obligations.

The guidelines should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm's business and the nature and range of financial services and activities undertaken.

The proposed guidelines address issues specific to manufacturers and distributors as well as issues common to both.

Manufacturers

The proposed guidelines for manufacturers address the following main topics:

- Identification of the potential target market by the manufacturer: categories to be considered;
- Identification of the potential target market: differentiation on the basis of the nature of the product manufactured; and
- Articulation between the distribution strategy of the manufacturer and its definition of the target market.

Distributors

The proposed guidelines for distributors address the following main topics:

3. Identification of the target market by the distributor: categories to be considered and differentiation on the basis of the nature of the product distributed;
4. Identification and assessment of the target market by the distributor: interaction with the provision of different investment services;
5. Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market;
6. Distribution of products manufactured by entities not subject to the MiFID II product governance requirements; and

7. Application of product governance requirements to the distribution of financial instruments manufactured or issued before the entry into application of MIFID II.

Transversal issues applicable to both manufacturer and distributor

These address the following issues:

- Identification of the *negative* target market by the manufacturer and distributor – clients for whom the investment products they manufacture and/or distribute are not compatible; and
- Application of the target market requirements to investment firms dealing in wholesale markets (i.e. with professional clients and eligible counterparties).

Next Steps

The consultation closes on 5 January 2017. ESMA will consider the feedback it receives to the consultation in Q1 2017 and expects to publish a final report in Q1/Q2 2017.



Notes for editors

1. [2016/1436 Consultation Paper on draft guidelines on MiFID II product governance requirements](#)
2. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.
It achieves these objectives through four activities:
 - i. assessing risks to investors, markets and financial stability;
 - ii. completing a single rulebook for EU financial markets;
 - iii. promoting supervisory convergence; and
 - iv. directly supervising specific financial entities.
3. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

Further information:

David Cliffe

Team Leader - Communications

Tel: +33 (0)1 58 36 43 24

Mob: +33 (0)6 42 48 29 06

Email: press@esma.europa.eu