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Your ref., Your message of Our ref., person in charge Extension Date

 BSBV 64/Horvath 3141 20th Sept 2022

**COMMENTS**

**ESMA GUIDELINES MIFID II PRODUCT GOVERNANCE**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as legal representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited Draft Document. We would like to note the following comments and remarks.

We welcome the recognition of the clustering approach for the definition of a target market for types of financial instruments which bear sufficiently comparable product features (paragraph 27).

However, the broad and undifferentiated exclusion of OTC derivatives or structured products from the clustering approach does not seem justified (see last sentence of paragraph 27).

In both asset classes the overwhelming number of products on the market are by practical necessity highly standardized and only certain product features such as term or underlying of the instrument may differ while the main product characteristics and risk factors remain unchanged. As manufacturers typically issue a large number of such products a high degree of operational automation of the issuance process is required which, in turn, leads to the standardization of product features enabling a uniform assessment approach for the target market.

From a technical point of view the implementation of a clustering approach does not restrict the manufacturer to define specific target market criteria on a product level, if necessary. For example, manufacturers of structured products regularly derive the risk level or risk/reward profile of an instrument from the respective SRI of the PRIIPs KID of such instrument and, thereby, tailor these important target market criteria to the level of the individual product. Therefore, a clustering approach can also be suitable for OTC derivatives or structured products as a clustering approach does not mean that all product features are assessed for target market purposes on a generic product type level only.

Furthermore, the proportionality approach also justifies that the clustering approach for products which are not marketed to retail clients can be applied with less granularity. This particularly applies to OTC derivatives distributed to professional clients and eligible counterparties.

We, therefore, propose that the exclusion of OTC derivatives or structured products shall not be reflected in the final guidelines. The requirements set out in the consultation (paragraph 27) that “homogenous clusters” must be identified and that “the more complex the underlying products of a cluster become, the more granular the clustering should be” are prudent standards for the target market definition which can be applied to all asset classes. A per se exclusion of certain asset classes on general terms without a material assessment of the specific product governance process of a specific manufacturer by the competent authority seems neither necessary nor justified.

Yours sincerely,

Dr. Franz Rudorfer

Managing Director

Division Bank and Insurance