Q1: Do you agree with the suggested clarifications on the identification of the potential target market by the manufacturer (excluding the suggested guidance on the sustainability-related objectives dealt with in Q2)? Please also state the reasons for your answer.

On the basis of the principle of proportionality, our members have taken the view that it could be appropriate, for certain products or for certain target market, to merge or simplify certain criteria of the target market determination. Therefore, we suggest including an exemption to the clarification added in paragraph 16 of the Guidelines (page 27) along the lines of "[…] *unless the complexity of the product and/or the targeted potential investors justify a simplified target market determination"*

Some of the guidelines do not seem to be an effective tool to achieve the expected objectives, as better described below:

Guideline 14. *In identifying the target market for a product, manufacturers should also take into account the results of the scenario and charging structure analyses undertaken for the relevant product.*

Scenarios In relation to retail structured products, we see no reason to deviate from PRIIPs KID scenarios and/or duplicate them in the Target Market assessment. The outcomes of such KID scenarios are already used in performing the target market assessment for that structured product. ACEPI believes that substantial levels of harmonization have been achieved in the products' scenarios, which successfully enhanced product understandability.

Charging structure

Cost assessment is, and should remain, a separate exercise to the Manufacturer's Target Marget for Structured Products.

It is already the responsibility of the manufacturer to disclose the impact of costs on the product return through the KID cost table; in turn the distributors assess the cost of the product against the client's needs (and against other products).

This is an established and effective disclosure tool, which has achieved significant levels of harmonization. In the identification of TM for Structured Products a more granular analysis of the various cost structures is not *per se* an element likely to play a role different or more meaningful than the cost elements and cost impact already considered for the purposes of the KID cost table.

Furthermore, the introduction of other simulation tools may lead to divergences of results between manufacturers.

Members note that manufacturers will consider scenario analysis and the charging structure as part of determining the target market and their internal product approval processes, applying the principle of proportionality. Running and disclosing scenario analysis, correlates with the relevant application of proportionality and members have controls in place to determine, based on the complexity of the product and the sophistication and categorisation of the client, whether individualised, point of sale scenario analysis is relevant.

Guideline 14. "*firms should not solely rely on such quantitative criteria but sufficiently balance them with qualitative considerations*".

The use of qualitative consideration in the description and assessment of Target Market may pose the risk of discretionality, subjectivity and inconsistencies thus prejudicing the understandability and comparability of millions of structured products in the EU.

The Target Market must be concise, objective, and comparable against other products' TM.

Many retail products, such as certificates and structured products, would have no economically viable market (and therefore would not exist) without automation and quantitative assessment.

ESMA case study #1 does not seem to us a good example of potential improvements because of its lengthy wording and as it leaves too much room for inconsistent descriptions from one manufacturer to another.

ACEPI believes that the target market categories used in the EMT standard, which is being currently used across jurisdictions to provide distributors with information on the products' target market, and relevant descriptions provide for sufficient qualitative elements for the description of the target market. **Guideline**

Guideline 19.b on K&E "*Regarding experience, the firm could describe how much practical experience target clients should have with elements such as: relevant product type, relevant product features and/or experience in thematically related areas. The firm could specify, for example, a time period for which clients should have been active in the financial markets*".

It seems to us fundamentally incorrect to ask a manufacturer to outline the required K&E of investors with such level of details information on end investors. It would also imply an unjustified (and redundant) shift of duties and responsibilities from the distributor to the manufacturer.

It is worth to remind that Manufacturers have only a theorical knowledge of end-investors, and that Potential Target Markets could be applied to different Distributors which could apply different criteria to categorize their client-base.

This kind of information is in the domain of distributor, which have a direct relationship with clients, can gather them - also through the questionnaires /profiles – for the purpose of the suitability assessment, which is made in a phase when it makes more sense i.e. vis-à-vis specific clients' profile rather than having a mind a potential, theoretical client.

Ultimately a granular description of thematic knowledge plays a fundamental role in the suitability process, but is not viable and meaningful in the product design phase.

We would also recommend that the manufacturer keeps using the 3 categories defined in the ACEPI Target Market Guidelines ("basic / informed / advanced") as currently defined in the EMT template defined by Findatex and used EU-wide.

This simple 3 categories rule is best suited also for the purpose of comparison among large number of products available, and therefore useful for distributors.

Guideline 19. d: "*Firms should use the risk indicator stipulated by the PRIIPs Regulation or the UCITS Directive, where applicable, to fulfil this requirement. If needed, firms should additionally take into account relevant risks that may not be measured by the risk indicator. For instance, it may be relevant to additionally assess the impact of currency risk on the target market for PRIIPs to be issued in a currency that is different from the reference currency of that target market*."

ESMA raised an observation that firms may be limiting the consideration of the target market's risk tolerance to a summary risk indicator provided in the context of other EU regulations (e.g. PRIIPs KID regulation). Members would like to highlight that, it is market practice for manufacturers of many MiFID financial instruments (including, structured products, insurance-based investment products and certain funds) to provide MiFID distributors with information on the target market by way of the European MiFID Template (EMT). The prescribed format for the provision of information on the risk tolerance of the target market under the EMT is the SRI (for PRIIPs) / SRRI (for UCITS) or otherwise an internal risk indicator ('low', 'medium' or 'high' for non PRIIPs and non UCITs).

Use of the SRI / SRRI as a measure of the risk tolerance of the target market ensures that information on the risk profile of the instrument is identified and communicated consistently across the manufacturers, distributors (via the EMT) and investors (via the KID / KIID). Therefore, it is the firms view that, where an SRI / SRRI is available, it should continue to be used for the purpose of the determination of the risk tolerance of the target market.
Furthermore, firms wish to highlight that possible additional risks which are not contemplated by the SRI / SRRI calculation methodologies are currently already taken into account by manufacturers for the purpose of determining the target market of the instruments and may affect other target market categories (e.g. where an instrument that provides for full capital protection is issued in a currency other than the one of the Member State where it is distributed, manufacturers may include clients who are not able to bear any capital loss in the neutral/negative target market instead of in the positive target market).
Therefore, firms wish that ESMA amends the guideline accordingly.

COMMENTS ON THE TARGET MARKET EXAMPLE 1 FOR A STRUCTURED NOTE (ANNEX V)

1. Type of clients: retail, professional clients and eligible counterparties

2. Clients' knowledge and experience "*experience with direct investment in structured products - understanding of what factors drive the movement of share prices and of how the movement of share prices impacts the value of the product - ability to understand the benefits of diversification and limited downside protection - understanding of counterparty risk and the credit rating of the bank that issued the underlying components, including any added risks arising from firms in different jurisdictions working together, and - understanding of the main assumptions behind the investment proposition, including the scenario analysis performed by the manufacturer*"

This description lacks conciseness and clarity; it may also be misleading as it leaves the door open to inconsistencies across product.

ACEPI would recommend to use the 3 levels of knowledge: basic, informed, and advanced.

3. Clients' financial situation with a focus on the ability to bear losses: "*ability to tie money up for six years and to bear a 100% capital loss"*

This description is fine, however, please note that the industry relies on the EMT and ACEPI guidance based on 4 scale of loss bearing capacity (c.f. page 6 of ACEPI guide: *No capital loss: • Limited capital loss • No capital guarantee: • Loss beyond capital).* Cost-benefit analysis also for this amendment should be undertaken

4. Clients' risk tolerance and compatibility of the risk/reward profile of the product with the target market: "- *financial ability and willingness to put the entire capital invested at risk, and - willingness to forego the benefits of diversification in exchange for limited downside protection "*

This description seems redundant/incompatible with the PRIIPs SRI, which is a good means for comparison across products.

Please also note that the concept of "*forego the benefits of diversification*" is already inherent to structured products, which are a typical portfolio diversification tool to limit equity portfolio exposure to downside risk.

5. Clients' objectives and needs: "*looking for the possibility of capital growth only over the medium-term (six-year term investment horizon), and expectation that, at expiry, none of the stocks will be worth less than 50% of the initial valuation. "*

This description kicks in features that should be considered in the suitability assessment stage - rather than when the product is designed by Manufacturers.

In our view the client's investment horizon should correspond to the product's duration (i.e. the recommended holding period), also in accordance with the conventions used in the EMT across the EU.

6. Clients who should not invest (the 'negative target market'): "*clients lacking the requisite knowledge and experience; clients with an investment horizon shorter than [x]; and clients lacking the ability to tolerate the risks of the investment are deemed incompatible with the characteristics of this product."*

Diversification of tenors must still be possible when the product Recommended Holding Period does not match exactly the investor's horizon

It would be detrimental to clients to consider a shorter (or longer) investment horizon as an automatic trigger of the negative target market.

Indeed this would (a) kill the diversification principle, and lead to a concentration of products having all the same tenor in the investor's portfolio, (b) unreasonably prohibit a purchase for hedging objectives (e.g. of a 6 year product for an investor who has a medium term (3 to 5 years) investment horizon).

7. Distribution channel: "*In light of the target market analysis, the optimal retail distribution channel for the product is via advised sales"*

We agree with the advised sales.

However, we also recommend that discretionary portfolio management by professional managers should be allowed, as well as appropriateness but limited to professional clients.

Furthermore, it is important that also investors potentially interested into investing in some products are allowed to buy these products in the secondary market with appropriates assessment or via execution-only service.

* * *

Q2: Do you agree with the suggested approach on the identification of any sustainability-related objectives the product is compatible with? Do you believe that a different approach in the implementation of the new legislative requirements in the area of product governance should be taken? Please also state the reasons for your answer.

ACEPI agrees with the suggested approach, which is consistent with the one retained for the suitability guidelines.

The draft Guideline makes clear that manufacturers have discretion not to specify a sustainability-related objective (para 20 of the draft Guidelines: "…. *when identifying sustainability-related objectives, firms **may** specify, where relevant, the following aspects*" (emphasis added)). This preserves the concept of proportionality for manufacturers in particular with respect to the sale of non-complex instruments and / or sales into wholesale markets. This also gives manufacturers welcome flexibility to consider sustainability related objectives, other than sustainability preferences, which may be more appropriate, e.g. for products that do not expressly consider alignment with the EU Taxonomy.

Q3: What are the financial instruments for which the concept of minimum proportion would not be practically applicable? Please also state the reasons for your answer.

ACEPI agrees with the statement in the Consultation paper whereby "*The concept of "minimum proportion" does not apply to financial instruments for which it is not practically possible to define such minimum proportion (for instance bonds or shares, etc.). These types of products could refer to the actual proportion instead of the minimum one*".

With respect to structured products, members view it as important for ESMA to provide guidance on the requirements that a financial instrument outside scope of SFDR and the EU Taxonomy would need to satisfy in order to fall within this criteria.

As for the use of the "minimum proportion", ACEPI believes that such concept needs to be interpreted and applied in such a way as the minimum threshold that a financial instrument needs to fulfill to be eligible for an investor.
Furthermore, ACEPI (a) does not see it necessary to modify it for products with a more static percentage, and (b) evidences that, with regard to structured investment products, there is no methodological difficulty in terms of applying a customer-defined minimum threshold to its single components and hence to the product as such.

Identification of the potential target market: differentiation on the basis of the nature of the product manufactured

Q4: Do you agree with the suggested guidance on complexity in relation to the target market assessment and the clustering approach? Please also state the reasons for your answer.

ACEPI generally agrees with the suggested guidance on complexity in relation to the target market assessment and the clustering approach whereby:

- the more complex or risky a product, the narrower the target market should be,
- the clustering approach should not lead to mixing up, in the same cluster, products having so different characteristics that they should be distributed to different target markets.

In this respect, Members note that substantive work has been done by manufacturers in the last years to build clusters of structured products having like-for-like characteristics which are assigned the same target market. Such clustering work has been conducted taking into account the features of those products, for example, the level of complexity, risks, underlying, level of capital protection, duration etc. of the products and resulted in very granular categories which are working well and the functioning of which is constantly assessed in the context of the annual reviews of the financial instruments performed by the manufacturers. Furthermore, where a manufacturer decides to issue a new typology of structured product whose characteristics may, in abstract, fall into one of the already established clusters, manufacturers' internal product approval process determine whether products of the new typology can actually be assigned the target market of the cluster or will be assigned a target market at the level of the individual product.

In turn ACEPI disagrees with considering the clustering approach not appropriate, in any case, for OTC derivatives and structured products (§27).

The clustering work has been conducted taking into account the features of those products, for example, the level of complexity, risks, underlying, level of capital protection, duration etc. of the products and resulted in sufficiently granular categories which are working well and the functioning of which is constantly assessed in the context of the annual reviews of the financial instruments performed by the manufacturers. Furthermore, where a manufacturer decides to issue a new typology of structured product whose characteristics may, in theory, fall into one of the already established clusters, manufacturers typically determine whether such products of the new typology fall within the existing clusters.

In light of the above, Members ask that ESMA reconsiders the wording of the proposed new guideline above by deleting reference to structured products or limiting the circumstances where the clustering approach is not expected to be appropriate only in cases of certain structured products with particular or bespoke characteristics (in line with wording used for OTC derivatives).

As concerns § 28, ACEPI agrees with the general idea that in case a clustering approach would be used for the purpose of determining the products' target market, the clusters should not be too granular, and more flexibility should be left to professionals to appreciate what the relevant criteria are per type of products.

II Guidelines for distributors

Timing and relationship of the target market assessment of the distributor with other product governance processes

Q5: Do you agree with the suggested guidance on the assessment of the general consistency of the products and services to be offered to clients, including the distribution strategies used? Please also state the reasons for your answer.

We agree.

In particular ACEPI agrees with statement under § 39 about gamification techniques that should not be used for the selling of financial instruments.

Q6: Do you agree with the suggested guidance on the identification of the target market by the distributor? Please also state the reasons for your answer.

As general remarks, ACEPI believes that (a) the suggested guidance requires an excessive granularity of key factors, which does not correspond to the existing sub-types of clients, (b) more flexibility should be left to firms as regards the relevant criteria per type of products and product governance clusters.

ACEPI considers that the scope of § 47 should have limited application i.e. to cases where manufacturers are non-MiFID firms and do not provide to the distributors, on a voluntary or contractual basis, a target market of their products similar to the one required for MiFID II manufacturers.

ACEPI deems unnecessary as well as unfeasible for various reasons (confidentiality, costs, etc.) that distributor get access to proprietary internal methodologies of the manufacturer. There may well be, and indeed in practice there is, cooperation between Manufacturer and Distributor which de facto encompasses interactive discussion about the outcomes of manufacturers' TM

Q7: Do you agree with the suggested approach on the determination of distribution strategy by the distributor? Please also state the reasons for your answer.

ACEPI has the following two comments:

§ 56 states that "*products should not be distributed under non-advised sales if the distributor cannot reasonably expect (i.e. ex ante) that the distribution strategy for the product (including its marketing and information strategy) will generally enable the product to reach the identified target market.*"

The new proposed guideline 56 seems to indicate that firms cannot sell, via non-advised sales, products for which the manufacturer/distributor identified a negative target market. This statement seems too absolute as it may be interpreted as a requirement for firms to *ex ante* collect from clients all the necessary information set out for suitability assessment, even in cases where they provide only non-advised services. It should therefore be amended, so to make it a flexible and non- absolute requirement.

The new proposed guideline 56 seems to indicate that firms cannot sell, via non-advised sales, products for which the manufacturer/distributor identified a negative target market. This approach appears to imply that firms must always perform a suitability assessment (and therefore need to ask investors comprehensive information and not only that on their knowledge and experience) if they wish to distribute products having a negative target market.
ACEPI therefore asks ESMA to amend the wording of the new proposed guideline 56 to contemplate that, under the principle of proportionality distribution (on the primary and secondary market) of products (including complex products) addressed to professional clients can be performed with the sole appropriateness test. Likewise, ACEPI's view is that the conclusions above should also apply in case of sale of products (including complex products) to retail clients on the secondary market, where investments are usually requested by investors themselves and not solicited in any way by the firm.

§ 59 requires to take additional measures when they intend to distribute "more complex products" under non advised services.

This requirement should be deleted because it has an unclear scope, goes beyond Level 2 framework and is ultimately unfeasible. Indeed there is no L1 or L2 definition of "more complex products", and of the so called "additional measure".

Portfolio management, portfolio approach, hedging and diversification

Q8: Do you agree with the suggested approach on the deviation possibility for diversification or hedging purposes when providing investment advice under a portfolio approach of portfolio management? In particular, do you agree that a deviation from the target market categories "type of client" and "knowledge and experience" cannot be justified for diversification or hedging purposes, neither in the context of investment advice under a portfolio approach, nor portfolio management? Please also state the reasons for your answer.

ACEPI supports the suggested approach on the deviation from the negative target market by distributors providing investment advice under a portfolio approach or portfolio management for diversification and hedging purposes.

ACEPI agree to the § 65 and § 66, that reporting of sales must be mandatory for the sales in the negative target market, when such a negative target has been identified by the manufacturer and that sales outside the positive TM do not need to be reported in case of portfolio diversification or hedging.

Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market

Q9: Do you agree with the suggested approach on the requirement to periodically review products, including the clarification of the proportionality principle? Please also state the reasons for your answer.

ACEPI believes that (a) product review and distributor feedback may be relevant mainly for actively marketed products, and (b) the annual review should be primarily driven by the distributor feedback that should be provided not only at manufacture's request and the existence of sales outside the target market.

Furthermore, ACEPI's view is that the principle of proportionality set out in guideline 70 with regard to product information is equally applicable to manufacturers. More specifically, where, based on the determination by the manufacturer, the product is no longer to be distributed as part of the initial distribution/subscription period ("primary market") and only available for trading by the investors on the secondary market, the manufacturer, as well as the distributor, should no longer be required to review the target market. An indication of the distribution phase as determined by the manufacturer could, for example be drawn from the period specified in the product's Final Terms (which are usually drawn by the manufacturer) according to the Prospectus Regulation.

Guidelines on issues applicable to both manufacturers and distributors

Q10: Do you agree with the suggested approach on the negative target market assessment in relation to a product with sustainability factors? Please also state the reasons for your answer.

Yes, we agree and support the clarification introduced by the guidelines in §81

Application of the target market requirements to firms dealing in wholesale markets (i.e. with professional clients and eligible counterparties)

Q11: Do you agree with the suggested updates on the application of the product governance requirements in wholesale markets? Please also state the reasons for your answer.

[ ]

Q12: Do you have any comment on the suggested list of good practices? Please also explain your answer.

We agree with the good practice #1 "distribution strategy by the manufacturer"

As regards the third good practice of "distribution strategy-distributor", we believe it should be implemented to clarify that it still allows clients to trade under their own responsibility on whatever financial product they may wish when they have received all the relevant information and warnings.

Furthermore, we suggest to implement the relevant arrangements with the distributor's feedback leaving to the parties the choice of the relevant contractual form they think appropriate.

Q13: Do you have any comment on the suggested case study on option? Please also explain your answer.

ACEPI would like ESMA to state that exchange listed securities (like warrants and turbos) should not be following the case study 6 : these products can never lead to contingent losses because the investor can only have a long option position and cannot short (or write) a naked warrant.

Consequently this case study is relevant only for exchange traded "contracts" manufactured by the exchange where investor can go short.

We remain at your disposal for any further information or clarification.

Yours faithfully,

Dario Savoia
Secretary General

Associazione Italiana Certificates e Prodotti d'Investimento – ACEPI