

## New MiFID II Suitability Rules

On the 23rd of September 2022, the European Securities and Markets Authority (“ESMA”) published its Final Report on the proposed new Guidelines relating to MiFID II suitability requirements (the “New Guidelines”). The New Guidelines are intended to advance the objectives of MiFID II by confirming and expanding upon the 2018 ESMA Guidelines in order to further strengthen investor protection.

### Background

Suitability assessments are a key requirement of investor safeguarding within the MiFID framework. In accordance with Article 25(2) of MiFID II and Articles 54 and 55 of the MiFID II Delegated Regulation, providers of investment advice (whether independent or not) are required to give bespoke recommendations to clients. In addition, providers of portfolio management services are required to make suitable investment decisions on behalf of clients. In determining suitability in this context, the relevant factors to be considered are the clients’ knowledge, experience, financial position and investment objectives. Therefore, in order to ensure compliance, investment firms and portfolio boards need to obtain the necessary information from clients.

### New Guidelines

The New Guidelines seek to improve the consistency, effectiveness, and harmonious application of suitability requirements, including in relation to sustainability. Notably, technological developments in the investment advisory space e.g. the increased use of automated systems.

The New Guidelines are likely to be published on ESMA’s website shortly and they will take effect six months after the publication date. Competent authorities across EU Member States, for example, the Central Bank of Ireland (the “CBI”) will be tasked with ensuring compliance.

The New Guidelines have been released following the amendments to the MiFID II Delegated Regulations pertaining to sustainability, and, as such, include related updated guidance including regarding the following aspects:

- Information to clients on the sustainability preferences: requirement to explain the concept of sustainability preferences to clients and set out the differences between products with and without sustainability features in clear and understandable language;
- Collection of data from clients on sustainability preferences: requirement to collect data on client preferences as between different types of sustainable investment products;
- Assessment of clients’ sustainability preferences: requirement to identify products that aligned with the clients sustainability preferences; and
- Organisational issues: requirement to train staff on sustainability and record the sustainability preferences of clients on an ongoing basis.

### Next Steps/Recommended Action

It is advisable for investment firms and boards to commence a review of relevant policies and procedures as these will need to be updated following publication of the New Guidelines.

It is also noteworthy that the Central Bank of Ireland issued a recent Dear CEO Letter on the implications and interpretation of MiFID II for investment firms and boards in the context of structured retail products and are actively ensuring that firms comply with their related obligations in the context of MiFID II. (This is the subject of another of our Legal Updates, available upon request).

Contact us for assistance updating policies and procedures to ensure compliance with applicable law, relevant ESMA Guidelines including the New Guidelines or the CBI requirements.



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