



ESMA Guidelines on MiFID II

ESMA has recently published new guidelines on MiFID II relating to product governance requirements (the “New Guidelines”) and to the manufacturing or distribution of financial instruments and structured deposits in particular.

The objective of the New Guidelines, released under Article 16(1) of MiFID, is to assist in ensuring investor protection by establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform and consistent application of the MiFID II requirements on product governance. They clarify the need to substantiate and document choices made by firms in the context of their product governance arrangements, including with regard to target market identification and related distribution strategies.

Guidelines for Manufacturers

Pursuant to Article 9(9) of the MiFID II delegated Directive, manufacturers must identify a potential target market. This should not solely be conducted on the basis of quantitative criteria but needs to also be based on sufficient qualitative considerations. The Guidelines provide five categories for manufacturers to use as a basis for identifying the target market:-

- Type of clients to whom the product is targeted;
- Knowledge and experience;
- Financial situation with a focus on the ability to bear losses;
- Risk tolerance and compatibility of the risk/reward profile of the product with the target market; and
- Clients’ Objectives and Needs.

The identification of the potential target market should be done in an appropriate and proportionate manner, considering the characteristics of the product, including its complexity, risk-reward profile or liquidity, or its innovative character.

Pursuant to Article 16(3) of MiFID II, the manufacturer must ensure that its intended distribution strategy is consistent with the identified target market and the manufacturer must take reasonable steps to ensure that the product is distributed to the identified target market.

Guidelines for Distributors

The distributor’s target market identification should be conducted on an ex-ante basis as part of

the general decision-making process about the range of services and products it is going to distribute. At the same stage, distributors should consider what distribution strategies should be used for the different client groups, including the way in which products will be marketed.

The obligation of the distributor to identify the actual target market and to ensure that a product is distributed in accordance the actual target market is not substituted by an assessment of suitability or appropriateness and has to be conducted in addition to, and before such an assessment.

Distributors should use the same list of categories used by manufacturers as a basis for defining the target market for their products. However, distributors should define the target market on a more concrete basis and should take into account the type of clients they provide services to, the nature of the products and the type of investment services they provide and the level of detail of information gathered from clients in this regard.

The distributor should take the distribution strategy identified by the manufacturer into account and review it critically. However, ultimately, the distributor should define its own distribution strategy.

What’s next?

These guidelines will apply as from two months from the date of publication of the guidelines on ESMA’s website in all EU official languages.



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