



Legal Update

Updated MiFID Guidelines: Suitability and Product Governance

The European Securities and Markets Authority (“ESMA”), the overall regulator of European financial markets has issued updated guidelines on suitability and product governance requirements under MiFID II and these new guidelines became effective from October 2023.

Background

The assessment of suitability is an important obligation to assist in ensuring investor protection under the MiFID II framework. It applies to the provision on any type of investment advice. In line with the obligations set out in Article 25(2) of Directive 2014/65/ EU on MiFID II and Articles 54 and 55 of the Commission Delegated Regulation (EU) 2017/565, investment firms providing investment advice must provide suitable personal recommendations to their clients or make suitable investment decisions on behalf of such clients. As part of the broader European Commission initiative on sustainable development, the MiFID II framework is being updated to integrate sustainability related requirements. The introduction of amendments to the MiFID II Delegation Regulation triggered the review and update of the existing ESMA guidelines on suitability. On the 27 January 2022 ESMA published a Consultation Paper on the draft guidelines on certain aspects of the MiFID II suitability requirements to explore the rationale of the proposed changes and gather inputs from stakeholders including market participants.



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Scope of Guidelines

These new and updated guidelines apply in relation to the manufacturing or distribution of financial instruments and structured deposits. These guidelines apply in relation to the following requirements: (i) Article 9(3) of Directive 2014/65/EU MiFID II, (ii) Article 16(3) and 16(6) of MiFID II, (iii) Article 24(1) and 24(2) of MiFID II and (iv) Article 9 and 10 of the Commission Delegated Directive (EU) 2017/593 (MiFID II Delegated Directive).

Purpose

These guidelines are based on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices to ensure the common, uniform and consistent application of the MiFID II requirements on product governance. ESMA expect these guidelines to result in the strengthening of investor protection.

How can Clerkin Lynch help?

Clerkin Lynch can assist in developing policies and procedures to ensure relevant regulatory guidelines are met by clients.



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