

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular: Consultation on the Draft guidelines on MiFID II product governance requirements

Background

The product governance requirements were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests. These requirements cover arrangements for:

- I. Firms to adopt when manufacturing products – *Product governance obligations for Manufacturers;*
- II. Firms to adopt when deciding the range of products and services they intend to offer to clients and when offering or recommending such products to clients – *Product governance obligations for Distributors.*

ESMA has decided to develop draft [guidelines](#) which mainly address how the manufacturer should assess the target market for its products. The latter was identified as the most important element for ensuring the uniform and consistent application of the new framework. The contents of the draft [guidelines](#) are structured as follows:

- Annex 1 lists all the questions set out in the consultation paper;
- Annex 2 contains the high-level cost-benefit analysis;
- Annex 3 contains the full text of the draft guidelines; and
- Annex 4 contains some practical examples and case studies related to the application of certain aspects of the guidelines.

The proposed [guidelines](#) address the under-mentioned topics:

I. Proposed guidelines in relation to *Manufacturers*:

- Identification of the potential target market by the manufacturer: categories to be considered;
- Identification of the potential target market: differentiation on the basis of the nature of the product manufactured; and
- Articulation between the manufacturer's distribution strategy and its definition of the target market.

II. Proposed [guidelines](#) in relation to *Distributors*:

- Identification of the target market by the distributor: categories to be considered and differentiation on the basis of the nature of the product distributed;
- Identification and assessment of the target market by the distributor: interaction with the provision of different investment services;
- Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market;
- Distribution of products manufactured by entities not subject to the MiFID II product governance requirements; and
- Application of product governance requirements to the distribution of financial instruments manufactured or issued before the entry into application of MiFID II.

III. Transversal issues applicable to *both Manufacturers and Distributors* are as follows:

- Identification of the negative target market by the manufacturer and distributor – clients for whom the investment products they manufacture and/or distribute are not compatible; and
- Application of the target market requirements to investment firms dealing in wholesale markets (i.e. with professional clients and eligible counterparties).

Target Audience

This paper is primarily of interest to National Competent Authorities and firms that are subject to the MiFID II [Directive 2014/65/EU]. In particular this paper is addressed to investment firms and credit institutions performing investment services and activities; especially, firms which manufacture financial instruments or structured deposits for sale to clients as well as the firms which distribute them. This paper is also important for trade associations, investors, and consumer groups.

Response to ESMA documents

ESMA is inviting responses to the specific questions as listed in the Consultation Paper. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations' by utilising the following [link](#).

All contributions received will be published following the close of the consultation, unless specifically requested not to do so. Kindly indicate clearly in your submissions any part which you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Kindly copy in MFSA with any feedback which you have passed on to ESMA. In this respect, kindly utilise the email addresses as specified hereunder.

Comments are most helpful if they:

1. Respond to the question stated;
2. Indicate the specific question to which the comments relates;
3. Contain a clear rationale; and
4. Describe any alternatives ESMA should consider.

Next Steps

The consultation closes on **5 January 2017**. ESMA will consider the feedback it receives to the consultation in Q1 2017 and expects to publish a final report in Q1/Q2 2017.

It is important to note that the proposed Conduct of Business rulebook features a dedicated chapter on Product Governance [Chapter 2]. It should be noted that the referred chapter will be updated with the final text of the guidelines on MiFID II product governance requirements once these are approved and published.

Contacts

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