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Updated ESMA Guidelines on MiFID II product governance requirements

On 27 March 2023, ESMA published its Final report on Guidelines on MiFID II product governance requirements.

On 27 March 2023, the European Securities and Markets Authority (“ESMA”) published its Final report on Guidelines on MiFID II product governance requirements (the “2023 Guidelines”).

1. Background

The 2023 Guidelines, which were preceded by a consultation paper (“CP”), replace the previous version of the guidelines issued by ESMA in 2017^[1] and take account of recent regulatory and supervisory developments.

2. Aim

According to ESMA, the 2023 Guidelines’ main aims are to:

- reduce the risk of mis-selling and its related financial consequences;
- reduce the risks linked to regulatory or supervisory arbitrage *via* an increased degree of harmonisation and more consistent supervisory convergence;
- create positive effects from improved harmonisation and standardisation, both for firms and for supervisory authorities; and
- reduce the risk of greenwashing in the manufacturing and distribution of products.

3. Key considerations

The main amendments introduced by the 2023 Guidelines include:

- A requirement to specify any sustainability-related objectives that a product is compatible with.

The 2023 Guidelines permit the alignment of “sustainability-related objectives” with the definition of “sustainability preferences” provided for in Article 2(7) of the amended MiFID II Delegated Regulation 2017/565.

- An option to identify the target market per cluster of products instead of per individual product (“clustering approach”), enabling the adoption of a common approach for products with sufficiently comparable features.
- A requirement that firms distributing more complex products through non-advised sales ensure that the distribution strategy is compatible with the product’s target market (by refining, as the case may be, the distribution strategy as identified by the manufacturer).
- A requirement for distributors to proactively provide the manufacturer with any relevant information to support the manufacturer’s periodic product reviews, instead of only providing information on request, subject to the proportionality principle.

In addition, the 2023 Guidelines are accompanied by case studies and a list of good practices.

4. Application date

The 2023 Guidelines will apply two months after translations into all EU official languages have been published on ESMA’s website.

Please ask our experts to help you to meet the challenges posed by the constantly evolving MiFID II framework.

[Read the 2023 Guidelines here_](#)

[Read the CP here_](#)

[1] ESMA35-43-620.

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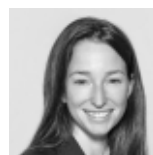
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