

Regulatory News Alert

Final report on product governance guidelines

16 June 2017

On 2 June 2017, ESMA published the much anticipated “Final report on product governance guidelines,” which closes the process launched in October 2016 with the publication of a consultation paper that has been subject to a lot of comments from the industry.

ESMA took due consideration of the different industry challenges identified by market participants. This final report reflects ESMA’s updated position on product governance, focusing on the target market assessment process.

We have identified the main take-away from the final report, emphasizing the difference between the initial consultation paper and the final guidelines:

Target market categories

- ESMA defines five categories (from six initially, merging clients’ needs and clients’ objectives) into a single category
- ESMA emphasizes the need to facilitate the exchange of information between distributors and manufacturers. Hence, manufacturers should limit the use of additional categories (i.e., other than the five defined categories)

Nature of the product

- ESMA emphasizes that for simpler, more common products, the target market should be identified with less detail, in a more generic way

Definition of target market by distributors

- ESMA details the process for distributors to refine the target market obtained from the manufacturer, emphasizing that this process can be less intensive for simpler or common products
- ESMA defines the process when both manufacturers and distributors define the target market at the same time

Portfolio management, portfolio approach, hedging, and diversification

- ESMA specifies that for diversification or hedging purposes, products can be sold outside the target market, as long as the portfolio remains suitable for the client
- ESMA specifies that suitability assessments may overwrite the target market assessment result
- The distributor is not required to report sales outside the positive target market to the manufacturer if these sales are for diversification and hedging purposes
- Sales of products into the negative target market should always be reported to the manufacturer and disclosed to clients, even for diversification or hedging purposes (and should be of rare occurrence)

Regular review of the target market

- ESMA further specifies how information should be reported by distributors to manufacturers

Guideline for both manufacturers and distributors

- ESMA does not restrict deviation from the target market, although reasons justifying deviations should still be documented and included in the suitability report (if applicable)

Even though the target market assessment process remains a challenge for the industry, ESMA recognized the challenges faced by the industry with regard to the initial guidelines, and it proposes “more” flexibility to reduce the burden of the process as well as to facilitate the exchange of information between stakeholders.

How can Deloitte help?

Deloitte actively monitors MiFID II developments and subsequent publications on an ongoing basis. We carefully analyze all relevant published documents in order to identify any changes and to provide the most updated view to our clients.

We offer to organize an informal workshop in your offices, to answer your questions, and discuss the latest regulatory updates as well as potential operational impacts and remediation scenarios.

Please do not hesitate to contact us, as we would be more than happy to prepare a workshop tailored to your requirements.

Your contacts

Simon Ramos

Partner | Advisory & Consulting

IM Leader

Tel : +352 45145 2702

siramos@deloitte.lu

Pascal Martino

Partner | Strategy & Regulatory – Operations

Tel : +352 45145 2119

pamartino@deloitte.lu

Annick Elias

Partner | Strategy, Regulatory &

Corporate Finance

Tel : +352 45145 4386

aelias@deloitte.lu

Lou Kiesch

Partner | Regulatory Consulting

Tel : +352 45145 2456

lkiesch@deloitte.lu

François-Kim Hugé

Partner | Fund Registration Services

Tel: +352 45145 2483

fkhuge@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2017 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg