

## **Consultation Paper on the Review of the Guidelines on MiFID II product governance requirements**

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#### **1.- Target participants**

This paper is primarily of interest to competent authorities, firms that are subject to Directive 2014/65/EU on Markets in Financial Instruments (MiFID II) and investors.

#### **2. - Information Note**

The product governance requirements introduced by MiFID II have proved to be one of the most important elements of the MiFID II investor protection framework, aiming at ensuring that financial instruments and structured deposits (“products”) are only manufactured and/or distributed when this is in the interest of clients. In accordance with Article 16(3) and 24(2) of MiFID II, firms that manufacture products for sale to clients or distribute products to clients shall maintain, operate and review adequate product governance arrangements. As part of these arrangements, a target market of end clients shall be identified and periodically reviewed for each product, as well as a distribution strategy that must be consistent with the identified target market. The MiFID II product governance requirements should ensure that firms act in their clients’ best interests during all stages of the product’s life cycle.

In accordance with Article 16(2) of the ESMA Regulation, this Consultation Paper (CP) sets out for consultation draft ESMA guidelines on certain aspects of the MiFID II product governance requirements. This CP builds on the text of the 2017 ESMA guidelines, which have been reviewed taking into account the following recent regulatory and supervisory developments: the European Commission’s Capital Markets Recovery Package and subsequent Amending Directive; the sustainability-related amendments to the MiFID II Delegated Directive; the recommendations on the product governance guidelines by ESMA’s Advisory Committee on Proportionality (ACP); and the findings of ESMA’s 2021 Common Supervisory Action on product governance.

The background to the proposals is explained in section 2 of the CP, including the questions ESMA poses to stakeholders. A complete list of all questions posed is provided in Annex I. Annex II includes the draft cost-benefit analysis. The full text of the draft guidelines is included in Annex III and a draft list of good practices is included in Annex IV. Annex V contains a list of illustrative examples and case studies related to the application of certain aspects of the guidelines. Lastly, the ACP advice on ESMA’s product governance guidelines is provided in Annex VI.

ESMA will consider the responses received to this consultation in Q4 2022 and expects to publish a final report, and final guidelines, in Q1 2023.

### **3.- Submission of comments**

The deadline for submitting comments is **7 October 2022**.

Respondents may send their comments through ESMA's website: [www.esma.europa.eu](http://www.esma.europa.eu). Both the paper of this consultation and the response form are available in the section [Consultations](#) (place the cursor on the word to obtain the link).

Likewise, please send a copy of your answers to the CNMV to the following email address: [documentosinternacional@cnmv.es](mailto:documentosinternacional@cnmv.es)

**Dirección de Asuntos Internacionales**

**CNMV  
c/ Edison 4  
28006 Madrid**