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ESMA Updates

ESMA Guidelines on Appropriateness and Execution-Only Requirements under MiFID II

On 3 January 2022, the European Securities and Markets Authority (ESMA) published the final report on its [Guidelines](#) on certain aspects of the MiFID II appropriateness and execution-only requirements. These requirements constitute an important element of investor protection in the provision of investment services other than investment advice or portfolio management. Under MiFID II, investment firms providing non-advised services are required to request information on the knowledge and experience of clients or potential clients to assess whether the investment service or product envisaged is appropriate, and to issue a warning in case the investment service or product is deemed inappropriate. The execution-only framework allows for an exemption to this assessment in certain conditions, including that the firm issues a warning to the client.

The purpose of the Guidelines is to enhance clarity and to encourage convergence in the application of the appropriateness and execution-only requirements. The ESMA Common Supervisory Action (CSA) conducted in 2019 revealed the necessity for such convergence in the areas of appropriateness and execution-only. The Guidelines address several key aspects of the appropriateness process, including the information to be provided to clients regarding the objective of the appropriateness assessment, the arrangements required to comprehend clients and products, the matching of clients with appropriate products and the effectiveness of warnings. Additionally, other related requirements are clarified, such as the execution-only exemption and record-keeping and controls.

ESMA had conducted a public consultation on these Guidelines in order to get feedback from interested parties. A feedback statement is included in the final report, summarising the comments received and highlighting the changes and clarifications made to the final guidelines in response to the input received during the consultation.

Q&As on MiFID II and MiFIR Investor Protection Topics

ESMA has also published an updated version of its [Q&As](#) on the implementation of investor protection requirements under the Market in Financial Instruments Directive and Regulation (MiFID II/MiFIR). The Q&As provide new answers on product governance that aim to give guidance on whether bonds embedding a make-whole clause are exempt from the MiFID II product governance requirements.

The new Q&As clarify that the mere presence of a make-whole clause is not enough for a financial instrument to be exempt from the MiFID II product governance requirements. It provides a list of practical examples identifying which cases would or would not be covered by MiFID II product governance requirements.

Target Audience

The content of this document is aimed at investment firms by providing clarity on the application of the MiFID II and MiFIR requirements.

Way Forward

The ESMA Guidelines on Certain Aspects of the MiFID II Appropriateness and Execution-Only Requirements Appropriateness and Execution-Only Requirements will be translated into the official languages of the EU and will be published on ESMA's website. The Guidelines will apply six months after the date of the publication on ESMA's website. Amendments will be implemented to the Conduct of Business Rulebook to incorporate the requirements of the updated ESMA Guidelines.

Furthermore, ESMA will continue to develop its Q&As on investor protection topics under MiFID II and MiFIR, both adding questions and answers to the topics already covered and introducing new sections for other MiFID II investor protection areas not yet addressed in these Q&As.