DILLON EUSTACE

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Product Governance - ESMA Publishes new Q&As

On 6 November 2020, the European Securities and Markets Authority (**ESMA**) updated its questions and answers on MiFID II and MiFIR investor protection and intermediaries topics (**Q&As**) by inserting three new questions and answers in relation to product governance (set out in Section 16 of the Q&As).

The updates made to the Q&As solely relate to Article 9(12) of the MiFID II Delegated Directive (2017/593/EU), which has been implemented into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017 (as amended). Article 9 sets out product governance obligations applicable to firms which manufacture financial instruments.

Background

The aim of the MiFID product governance rules (**PGRs**) is to ensure that manufacturers and distributors of investment products act in the client's best interests during all stages of the life cycle of products or services. The PGRs impose obligations on firms which (i) manufacture and/or (ii) distribute MiFID financial instruments or (iii) who sell or advise on structured deposits.

The PGRs apply to:

(i) Investment firms;

(ii) Credit institutions when providing MiFID II investment services and activities;

(iii) Investment firms and credit institutions when selling or advising clients in relation to structured deposits; and

(iv) UCITS Management Companies and AIFMs who have extended their authorisations to include portfolio management and, potentially, non-core services, but only in respect of those extended services.

For further information on any of the issues discussed in this article please contact:

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Under the PGRs, firms that create, develop, issue and/or design financial instruments, including when advising corporate issuers on the launch of new financial instruments, are considered to be manufacturers.

The new Q&As

ESMA's new Q&As aim to give guidance to firms on how they can achieve compliance with the obligations in the PGRs relating to charging structure and ensure that:

(i) financial instruments' costs and charges are compatible with the needs, objectives and characteristics of the target market;
(ii) costs and charges do not undermine the financial instrument's return expectations; and
(iii) the charging structure of the financial instrument is appropriately transparent for the target market, ensuring that it does not disguise charges or is too complex to understand.

Next Steps

Firms who are manufacturing financial instruments should take the updated Q&As into account as part of their product approval process, specifically in relation to their charging structure.

A link to the Q&As can be found here.

If you have any queries about the information contained in this article, please contact Keith Waine or Enda McGeever, or your usual Dillon Eustace contact.

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