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Article 16-a

Product governance requirements

1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process).

The product approval process shall contain all of the following:

(a) a specification of an identified target market of end-clients within the relevant category of retail clients for each financial instrument and of the intended distribution strategy associated to the identified target market;

(b) a clear identification of the target market's objectives and needs;

(c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;

(d) an assessment of all risks relevant to the identified target market or arising from the distribution strategy and an assessment of whether the intended distribution strategy is consistent with the identified target market.

(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council* the value-for-money assessment consisting of:

- i. a clear identification and quantification of all costs and charges related to the financial instrument, its performance and, if any, an identification and, where possible, a quantification of its benefits for the retail client other than the financial performance. Where distribution costs and charges, including inducements, are included in the manufacturer's costs, a clear and separate identification and quantification of such costs, charges, including inducements, and
- ii. an assessment of whether the financial instrument offers value for money to the retail client, by determining whether the identified costs and charges are justified and proportionate, having regard to the performance, other benefits for the retail client, characteristics, objectives, the identified target market, distribution strategy, and strategy of the financial instrument.

An investment firm shall regularly review the financial instruments it manufactures, during the whole duration of their distribution, taking into account any event or risk that could materially affect the identified target market and their performance, to assess whether the financial instruments remain consistent with the objectives and needs of the identified target market, whether the intended distribution strategy remains appropriate and whether the financial instruments continue to offer value for money.

The value for money assessment of a financial instrument, as referred to in this paragraph, shall be documented and include a specification how the costs, charges and performance of that financial instrument compare to the costs, charges and performance of the financial instruments included in the relevant peer group¹. That peer group of financial instruments shall consist of an appropriate range of financial instruments which are comparable, as regards the criteria set out in the methodology referred to in paragraph 14, to the financial instrument that is subject to the value for money assessment. The peer group shall include financial instruments, which are marketed in the Member State or Member States where the relevant financial instrument will be distributed and in other Member States where comparable financial instruments are distributed. The peer group of financial instruments shall be established in compliance with the methodology referred to in paragraph 14.

An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and its product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate information on the value for money assessment of that financial instrument.

ESMA shall, by [...] develop, and update periodically, guidelines regarding the benefits referred to in the second subparagraph, point (e).

2. An investment firm that offers or recommends financial instruments which it does not manufacture shall have in place adequate arrangements to obtain the information referred to in paragraph 1, to understand the characteristics and identified target market of each financial instrument and the manufacturer's product approval process, including the value for money assessment of that financial instrument by the manufacturer.

An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall ensure the following value for money assessment:

- i) a clear identification and quantification of the costs of distribution of the financial instrument and any further costs and charges not already taken into account by the manufacturer of that financial instrument;
- ii) an assessment of whether the financial instrument offers value for money, by determining whether the total costs and charges are justified and proportionate, having regard to the performance, other benefits for the retail client, characteristics, objectives, the identified target market, distribution strategy, and, if relevant, strategy of the financial instrument.

¹ This text will need to be coupled with an appropriate recital specifying that the peer grouping process should consider a comparison of financial instruments and not a comparison of investment firms. The peer group comparison should be carried out without prejudice to the applicable competition rules and not be construed in a way that could raise competition concerns.

An investment firm shall regularly review financial instruments it offers or recommends, during the whole duration of their distribution, taking into account any event or risk that could materially affect the identified target market and their performance, to assess at least whether the financial instrument remains consistent with the objectives and needs of the identified target market, whether the intended distribution strategy remains appropriate and whether the financial instrument continues to offer value for money.

The value for money assessment of a financial instrument referred to in this paragraph shall be documented and include a specification how the costs, charges and performance of the financial instrument compare to the costs, charges and performance of the financial instruments included in the relevant peer group². That peer group shall consist of an appropriate range of financial instruments which are comparable, as regards the criteria set out in the methodology referred to in paragraph 14, to the financial instrument that is subject to the value for money assessment. The peer group shall include financial instruments which are offered or recommended in the relevant Member State or Member States where the relevant financial instrument will be distributed and in other Member States where comparable financial instruments are distributed. The peer group of financial instruments shall be established in compliance with the methodology referred to in paragraph 14.

3. An investment firm which manufactures and offers or recommends the financial instrument may establish a single value for money assessment relating to both manufacturing and distribution stages, in line with the requirements under paragraphs 1 and 2.

4. When, in its value for money assessment, an investment firm determines that the value for money of a financial instrument that it wishes to manufacture, offer or recommend, is at a significant distance from the average costs and performance of financial instruments in the relevant peer group to the detriment of the retail client, the investment firm shall be required to substantiate in a detailed way, through additional testing and further assessments, how the financial instrument shall deliver value for money to retail investors. Where necessary, the investment firm shall take appropriate actions to ensure that the financial instrument delivers value for money to retail clients. The substantiated assessment shall be recorded and shall be kept by the investment firm in accordance with the rules set out in paragraphs 6 and 7.

If the value for money of a financial instrument cannot be ensured, the investment firm shall not approve, manufacture, offer or recommend that financial instrument.

5. The management body of an investment firm, whether acting as a manufacturer or as a distributor, shall define, oversee and be accountable for the implementation of the governance arrangements that ensure the adequacy and effectiveness of the product approval process³. Compliance reports to the management body shall include information on value for money assessments and any remedial actions taken to ensure those instruments offer value for money to retail clients.

² See footnote 1.

³ Alternatively the first sentence could also be included as part of Article 9(3) MiFID.

6. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following, where applicable:

(a) the dataset from which the relevant peer group of financial instruments was selected and the criteria used for the selection of the peer group, relevant information on the selected financial instruments within the peer group and the results of the comparison of the financial instrument to the relevant peer group;

(b) any substantiated assessment demonstrating how the financial instrument shall offer value for money despite being at a significant distance from the average of the peer group of financial instruments and any appropriate actions to ensure value for money;

(c) any remedial actions taken by the investment firm, following the initial value for money assessment, to ensure that the financial instrument offers value for money to retail clients.

7. Member States shall ensure that investment firms keep the record of value for money assessments for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the investment firm upon request of the competent authority.

8. Competent authorities shall carry out regular checks in their Member States to ensure that investment firms select relevant peer groups of financial instruments and conduct value for money assessment in accordance with the methodology set out pursuant to paragraph 14. Competent authorities shall report annually to ESMA on the outcomes of their supervisory activity.

9. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities, on an annual basis, details of the costs of distribution, including any cost related to the provision of advice or any inducement paid or received.

The competent authorities shall transmit such details of costs of distribution to ESMA without undue delay.

10. ESMA shall publish, on an annual basis, anonymised or aggregated data on costs and charges, including inducements, relating to the financial instruments referred to in paragraphs 1 and 2 and any related investment services, based on data available to ESMA, including information on costs, charges and inducements transmitted by the competent authorities, key information documents required under Regulation 1286/2014, any relevant information on costs and charges accessible on the European Single Access Point (ESAP)⁴.

11. ESMA shall ensure coordination of the competent authorities' supervisory practices on value for money assessments. It shall promote consistent supervision on value for money assessments

⁴ Regulation 2023/2859 of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability

and enhance convergence across Member States. ESMA shall include, in the ESMA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by ESMA. Where necessary, ESMA shall issue guidance to foster convergence in supervisory outcomes of national competent authorities.

12. ESMA shall use its supervisory convergence powers to ensure a harmonized supervision and enforcement by competent authorities of costs and charges, including inducements, disclosure, selection of peer groups of financial instruments and value for money assessments conducted by investment firms.

13. The policies, processes and arrangements referred to in paragraphs 1 to 12 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.

14. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to specify the methodology for establishing peer groups of financial instruments referred to in paragraphs 1 and 2. That methodology for peer groups of financial instruments shall include:

- a) the criteria and parameters for the selection of eligible financial instruments for the composition of peer groups, with features comparable to those of a financial instrument subject to a value for money assessment, including, where relevant, comparable recommended holding periods, risks, types of benefits, investment and distribution strategies, objectives, target markets, defined coupon and yield, sustainability features, to ensure the accuracy, reliability and objectivity of the peer group comparisons;
- b) the criteria to select eligible financial instruments for the composition of peer groups to ensure a representative number of financial instruments in those peer groups both in the Member State or Member States where the relevant financial instrument will be distributed and in other Member States where financial instruments with comparable criteria and parameters as set out in point a) are distributed;
- c) the data that can be considered appropriate and reliable for the composition of the peer groups of financial instruments. Such data could, in particular encompass, the information included in the key information document referred to in Article 1 of Regulation 1286/2014, statistics published by ESMA in its annual report on costs and performance of EU retail investment products, or on statistics on costs and performance made available, on a non-discriminatory basis, to the firms, by professional associations;
- d) the criteria and parameters for the selection of eligible financial instruments for the composition of peer groups or another methodology where there are no or very limited comparable financial instruments available.

15. In order to ensure a harmonized application and provide guidance to investment firms on the production of value for money assessments, ESMA shall develop draft implementing technical

standards to determine the content and format of the value for money assessment to be produced by the investment firms in accordance with the requirements referred to in paragraphs 1 and 2 and based upon the information referred to in paragraph 14.

ESMA shall submit those draft implementing technical standards to the Commission by [xxxx].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

16. By ... [five/seven years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA relevant information concerning the implementation of this Article by investment firms.

On the basis of the information provided by Member States, the Commission, in consultation with ESMA and EIOPA, shall carry out an evaluation of the effective implementation of this Article and assess the impact of the value for money assessment, including the peer group comparison.