









# Annex to MiFID II – Product Governance Provisions

Grania Baird and Fiona Lowrie | November 2016

	Current Guidance	MiFID II obligations	Impact
<b>PROVIDER/MANUFACTURER RESPONSIBILITIES</b>			
<b>Product Design/Target Market</b>	<ul style="list-style-type: none"> <li>• should identify target market</li> <li>• should stress test product/service systems</li> <li>• should have systems and controls to manage risks posed by the product or service design</li> </ul>	<ul style="list-style-type: none"> <li>• must identify target market and undertake detailed product testing</li> <li>• should also identify groups for whom products/services are unsuitable</li> <li>• must take reasonable steps to ensure product is distributed to target market</li> <li>• manufacturers will also be subject to wide-ranging conflict of interest obligations in the new rules, including ensuring that the design of the product does not lead to market integrity issues</li> <li>• product/service should be reviewed regularly to ensure that the product/service and the distribution strategy remain suitable for the target market</li> <li>• firms working together on the development of new products should have an agreement as to how they will share their responsibilities</li> <li>• when firms collaborate to develop a product only one target market needs to be identified</li> </ul>	 <ul style="list-style-type: none"> <li>• while many of the MiFID II requirements build on the current FCA guidance, the inclusion of wide ranging conflicts of interest obligations may impact firms</li> <li>• firms should also take particular note of the need to identify the target market at a "sufficiently granular level"</li> </ul>

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<b>Information to distributors</b>	<ul style="list-style-type: none"> <li>information should be sufficient, appropriate, comprehensible, and allow distributors to give advice if appropriate</li> <li>make it clear if information <u>not</u> intended for customer use</li> </ul>	<ul style="list-style-type: none"> <li>must make available all appropriate information on the product and the target market</li> <li>must make available information about appropriate channels of distribution</li> <li>must ensure information is of a standard to allow distributors to understand and recommend the product properly</li> <li>must make it clear if information not intended for end customer use</li> </ul>	 <ul style="list-style-type: none"> <li>provided firms have been following current guidance it is likely that they are meeting or close to meeting the MiFID II requirements</li> </ul>
<b>Selecting distribution channel</b>	<ul style="list-style-type: none"> <li>should decide whether consumers of the product need advice prior to purchasing it</li> <li>should review whether the distribution practice corresponds (or not) to envisaged distribution plan by collecting and analysing management information</li> </ul>	<ul style="list-style-type: none"> <li>manufacturers' distribution strategy should favour the sale of the product to the identified target market</li> <li>manufacturers should collect and review information to detect whether the actual distribution reflects the strategy</li> </ul>	 <ul style="list-style-type: none"> <li>while MiFID II requirements are broader than those set out in the current guidance, most firms are likely to already be very clear on distribution strategy and process</li> </ul>
<b>Post-sale responsibilities</b>	<ul style="list-style-type: none"> <li>information provided to distributors must be clear, fair and not misleading</li> <li>should periodically review products whose performance may vary materially to check whether the product is still meeting target market's needs</li> <li>breakpoints in the contracts should be communicated clearly to customers</li> <li>should act fairly and promptly when handling claims or paying out on a product</li> <li>must establish and maintain an effective and transparent complaints handling system</li> </ul>	<ul style="list-style-type: none"> <li>must regularly review products to ensure that the product remains appropriate for the target market, to check whether it is reaching consumers it is not suitable for, and to ensure that the distribution strategy remains appropriate</li> <li>must review products at re-launch or when a crucial event occurs which could affect the return to end customers</li> <li>breakpoints in the contracts should be communicated clearly to customers</li> <li>the development and periodic reviews of products should be overseen by the compliance officer</li> <li>management body also needs to ensure that it has effective oversight of the product governance process</li> <li>compliance reports should be prepared for the management body and should be available to the FCA on request</li> </ul>	 <ul style="list-style-type: none"> <li>firms will be obliged to include further factors in their product reviews and potentially to carry out a greater number of reviews than they currently do</li> <li>responsibility for this process will now be specifically attached to the person holding the compliance oversight function</li> <li>management bodies will need to review further reports and firms may be required to submit them to the FCA</li> </ul>

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<b>DISTRIBUTOR RESPONSIBILITIES</b>			
<b>Product Design/Target Market</b>	<ul style="list-style-type: none"> <li>no specific responsibilities, although note section on selection of provider</li> </ul>	<ul style="list-style-type: none"> <li>identify target market</li> <li>consider whether product/service suitable for target market <u>and</u> who it would be unsuitable for</li> <li>distribution strategy should be consistent with the needs of target market</li> <li>product/service should be reviewed regularly to ensure that it remains suitable for the target market</li> <li>must have processes in place to ensure that product/service meets all applicable regulatory rules</li> <li>where distributors are not supplying products directly to end customers, distributors should consider whether they are also acting as manufacturers and therefore subject to those obligations as well</li> </ul>	 <ul style="list-style-type: none"> <li>this is an area where there is a significant increase in responsibility for distributors</li> <li>firms should take particular note of the need to identify the target market at a "sufficiently granular level"</li> <li>distributors will be required to police the products and services they offer</li> <li>when a firm acts as both manufacturer and distributor only one target market assessment is required</li> </ul>
<b>Information requirements</b>	<ul style="list-style-type: none"> <li>should understand materials before passing them on</li> <li>should ask for training/information if required</li> <li>should not distribute products/advice they do not understand</li> <li>when passing on information to other distributors, should consider how it will be used</li> </ul>	<ul style="list-style-type: none"> <li>must obtain sufficient information regarding the product/service to understand it</li> <li>should ask for further training/information if required</li> <li>should not distribute products/services they do not understand</li> <li>when passing on information to other distributors, need to consider how it will be used</li> </ul>	 <ul style="list-style-type: none"> <li>these MiFID II requirements should reflect most firms' current practice</li> </ul>

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<b>Selection of providers / manufacturers</b>	<ul style="list-style-type: none"> <li>• should consider how provider's product/service fits with customer's needs and risk profile</li> <li>• should consider what impact the selection of a given provider will have on a consumer in terms of charges the customer will face, the financial strength of the provider and possibly where information is available about how efficiently and reliably the manufacturer will deal with the end customer if complaints arise, claims are made, or if the product reaches maturity</li> </ul>	<ul style="list-style-type: none"> <li>• must consider what impact selection of a given provider will have on the end customer against certain criteria including the impact of charges, the financial strength of the manufacturer, and – to the extent information is available – how efficiently and reliably the manufacturer will deal with the end customer if complaints arise, claims are made, or if the product reaches maturity</li> </ul>	 <ul style="list-style-type: none"> <li>• these MiFID II requirements should reflect most firms' current practice, although the distributor may have to request further information on the manufacturer's processes to try to access how the manufacturer will deal with the end customer regarding complaints etc</li> </ul>
<b>Post-sale responsibility</b>	<ul style="list-style-type: none"> <li>• should comply with any ongoing contractual obligations (eg ongoing advice or periodic reviews)</li> <li>• should consider any express or implied obligations it has made to consumer</li> <li>• where involved in handling claims or paying out on a product, should act fairly and reasonably</li> <li>• must establish and maintain an effective and transparent complaints handling system</li> <li>• should pass on any communications received from customers (intended for or suited for providers to act upon) in a timely and accurate manner</li> </ul>	<ul style="list-style-type: none"> <li>• must provide sales information to manufacturer, in particular any sales to non-target market</li> <li>• should provide relevant information from reviews of product/service to manufacturer</li> <li>• the development and periodic reviews of products and services distributed should be overseen by the compliance officer</li> <li>• management body also needs to ensure that it has effective oversight of the product/service governance process</li> <li>• compliance reports should be prepared for the management body and should be available to the FCA on request</li> </ul>	 <ul style="list-style-type: none"> <li>• firms will be obliged to include further factors in their product reviews and potentially to carry out a greater number of reviews than they currently do</li> <li>• responsibility for this process will now be specifically attached to the person holding the compliance oversight function</li> <li>• management bodies will need to review further reports and firms may be required to submit them to the FCA</li> </ul>

If you require further information on anything covered in this briefing please contact [Grania Baird \(grania.baird@farrer.co.uk; +44\(0\)20 375 7541\)](mailto:grania.baird@farrer.co.uk), [Fiona Lowrie \(fiona.lowrie@farrer.co.uk; +44\(0\)20 375 7232\)](mailto:fiona.lowrie@farrer.co.uk), or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Commercial](#) page on our website.

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