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MiFID II: Focus on the relationship between producers and distributors

Definition of the target market of financial instruments and exchange of information: MiFID II has established new obligations concerning the relationship between producers and distributors of financial instruments, to ensure greater protection of investors. This new product governance regime led to the scrapping of the national regime of agreements between producers and distributors when MiFID II was transposed into French law.

A harmonised regime across Europe

MiFID II has established a new regime of governance of financial instruments with the aim of providing greater protection to investors. This new regime after transposition regulates the respective responsibilities of producers and distributors and creates a link between them, with the communication of information to distributors and sales information feedback to producers. The declared objective at European level is to create the conditions that will ensure that financial products are distributed to the right clients.

In France, prior to the transposition of MiFID II on 3 January 2018, the relationship between producers and distributors through agreements on the exchange of information was governed by the Monetary and Financial Code. This Code contained provisions about the product marketed and the validation of advertising communications. Taking into account the new European regime under MiFID II and to avoid all forms of over-transposition, the national regime of agreements has been repealed. Consequently, AMF Position-

Recommendation DOC-2014-05, which was based on the legal texts governing this regime, has also been repealed.

Reinforced obligations for producers and distributors

Producers subject to MiFID II include investment firms and credit institutions that are authorised to provide one or more investment services.

The obligations of these producers include, in particular:

- Providing for a validation process for each financial instrument by defining a target client market;
- Defining a distribution strategy;
- Making all the necessary information about the financial instruments available to all distributors.

Whether they are investment services providers or financial investment advisors, distributors must in particular:

- Have suitable systems for obtaining relevant information about the financial instruments, in order to identify the target market for their own clients, in line with the target market established by the producer. Distributors must determine the target market of the financial instrument, including when the producer is not an entity subject to MiFID II. In this case, the distributor must obtain sufficient information about the financial instrument in order to have enough information to fulfil its obligations;
- Notify the producer of sales outside the target market.

MiFID II also provides that when an investment service provider is in the middle of the distribution chain, between the producer and distributor in contact with the client, this intermediary must facilitate the exchange of information between them.

The written agreement: a tool that is still relevant


The application of the product governance regime is not subject to the conclusion of a written agreement between the producer and the distributor. Nevertheless, the ESMA mentions the establishment of an agreement when the producer is not an entity subject to MiFID II. This is the case of a portfolio asset management company.

It does not matter whether the product is designed by an entity that is or is not subject to MiFID II. Signing a written agreement continues to be a relevant tool for regulating more generally the obligations of all parties in the distribution chain. This tool clarifies the obligations of each of the parties in several areas, in particular with respect to the preparation and, where necessary, the validation of the sales literature used by the distributor.

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