



MIFID II APPROPRIATENESS AND EXECUTION-ONLY REQUIREMENTS

References: Article L. 533-13 II and III of the Monetary and Financial Code, Article 56 of Delegated Regulation (EU) 2017/565

This Position incorporates the 13 guidelines from ESMA¹ on certain aspects of the MiFID II appropriateness and execution-only requirements (ESMA35-43-3006), hereinafter referred to as the “Guidelines”.

Presentation of the Guidelines

The objective of the Guidelines is to clarify the application of certain aspects of the MiFID II appropriateness and execution-only requirements² in order to ensure the common, uniform and consistent implementation of Article 25(3) of MiFID II and Articles 55 and 56 of the Delegated Regulation and of Article 25(4) of MiFID II and Article 57 of the Delegated Regulation.

The Guidelines are intended to foster greater convergence in the interpretation and supervision of the MiFID II suitability requirements, focusing on a number of important issues, and to enhance investor protection as a result.

The Guidelines are applicable from 12 October 2022.

ESMA’s thirteen guidelines provide clarifications regarding the following aspects:

- Information provided to clients about the purpose of the appropriateness assessment;
- Arrangements necessary to understand clients;
- Extent of information to be collected from clients (proportionality);
- Reliability of client information;
- Relying on up-to-date client information;
- Client information for legal entities or groups;
- Arrangements necessary to understand investment products;
- Arrangements necessary to ensure a consistent appropriateness assessment;
- Effectiveness of warnings;
- Qualifications of firm staff;
- Record-keeping;
- Determining situations where the appropriateness assessment is required;
- Controls.

¹ European Securities and Markets Authority.

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, amending Directives 2002/92/EC and 2004/39/EC.

Scope

The Guidelines apply to:

- competent authorities; and
- investment firms and credit institutions when providing non-advised services (defined in the Guidelines as investment services other than investment advice and third-party portfolio management, and the selling of structured deposits³) and alternative investment fund managers (AIFMs) when providing the service of orders reception and transmission for third parties.

The AMF also applies these Guidelines to:

- asset management companies that receive and process subscription and redemption orders for units or shares of UCITS or AIFs marketed in France that they manage or of UCITS or AIFs marketed in France that are managed by other asset management companies under the terms of Instruction DOC-2008-04;
- asset management companies governed by Title I quarter of Book III of the AMF General Regulation when they provide the service of orders reception and transmission for third parties.

These Guidelines are available in the section “Annexes & Links” and on the ESMA website at the following URLs:

- In French:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-3006_gls_on_certain_aspects_of_the_mifid_ii_appropriateness_and_execution-only_requirements_fr.pdf

- In English:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-3006_gls_on_certain_aspects_of_the_mifid_ii_appropriateness_and_execution-only_requirements_en.pdf

³ Credit institutions that sell structured deposits do not fall within the AMF’s jurisdiction.