

**CHAMBER OF BROKERAGE HOUSES (CBH) POSITION TO THE CONSULTATION PAPER ON
DRAFT GUIDELINES ON MIFID II PRODUCT GOVERNANCE REQUIREMENTS
(ESMA/2016/1436)**

Q1: Do you agree on the list of categories that manufacturers should use as a basis for defining the target market for their products? If not, please explain what changes should be made to the list and why.

1. List of categories that manufacturers should use as a basis for defining the target market for their products may not contain such a strictly qualitative category as “client’s needs”;

Possibility of „wide” and general choice of qualitative criteria for the category “client’s needs”, for example: ethical investment, green investment may cause difficulties with interpretation and proper understanding such qualitative demands in relations between client and distributor, as well as may cause difficulties for distributor to select the best products for the client.

2. Client’s objectives category might include limited number of criteria possible to define measurably like: client’s investment horizon, client’s preferred investment targets, including for example: capital protection, maintaining real value of the investment, stable investment increase, profits maximizing, which would confirm or complete criteria regarding financial situation with a focus on the ability to bear losses and risk tolerance.

Applying descriptive criteria for individual categories, which are difficult or sometimes even impossible to be presented measurably, may cause difficulties in implementing unified, comparable standards concerning entities active on the specific capital market.

It seems that assigning target markets especially for non-complex products may be based on measurable, quantitative criteria like for example: the specified percentage of maximum number of points in evaluation of the knowledge and experience, maximum percentage loss the client is able or willing to afford in the financial situation evaluation, limited measurable scope of criteria for risk tolerance evaluation.

Q2: Do you agree with the approach proposed in paragraphs 18-20 of the draft guidelines on how to take the products’ nature into account? If not, please explain what changes should be made and why.

Manufacturer should define general terms and conditions of the product’s distribution strategy, such as: advised, non-advised; with “positive” score of appropriateness test for the risk/reward profile of the given product. However specification of acquisition channel should be left to the distributor’s decision.

Q3: Do you agree with the proposed method for the identification of the target market by the distributor?

Generally we agree, that distributor have to use all available information. But definitely we see the need of delegation by ESMA in guideline, the possibility to gather information for the purpose of product governance, which are in scope of suitability assessment (most from 6 categories mentioned in point 11 are overlapping with suitability criteria). Suitability assessment, according to MIFID rules, is reserved only for investment advice service and portfolio management. In some countries even gathering this kind of information, out of the scope of 2 mentioned services, and using it for client targeting, could be treated as providing to the client wrong service or even illegal activity.

So we see the need of clarification that for PG purposes investment firm could gather and use the information being in the scope of suitability assessment, even if the service providing to the client is not investment advice or portfolio management.

Q5: Do you believe further guidance is needed on how distributors should apply product governance requirements for products manufactured by entities falling outside the scope of MiFID II?

Yes, it seems important to have guidance concerning product governance requirements for distributors offering publicly (as a rule on the basis of prospectus) or non- publicly financial instruments like shares, bonds and investment's certificates.

Q6: Do you agree with the proposed approach for the identification of the 'negative' target market?

Suggested approach is too general. The "negative market" category might be defined in more detail in terms of possible criteria e.i. demographic criterion – the age, appropriateness test criterion - excluding/acceptable, risk profile criterion – excluding/acceptable.