Organizational requirements for investment firms under MiFID II and Delegated Commission Regulation (EU) 2017/565

KOMISJA
NADZORU
FINANSOWEGO

PRODUCT GOVERNANCE

Manufacturer vs distributor

'manufacturer' means a firm that manufactures an investment product, including the creation, development, issuance or design of that product, including when advising corporate issuers on the launch of a new product;

'distributor' means a firm that offers, recommends or sells an investment product and service to a client.

GUIDELINES FOR MANUFACTURES

Potential target market by the manufacturer- categories to be considered

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- The potential target market identification by manufacturers should not be solely conducted on the basis of quantitative criteria but needs to be based on sufficient qualitative considerations as well.
- Services for the mass market in particular, may require automation of processes and this automation is usually based on formulas or algorithmic methodologies that process quantitative criteria for products and clients. Such numerical data is usually generated through scoring systems (for example, by using product features like volatility of financial instruments, rating of issuers, etc. or through "conversion" of factual data into numerical systems).
- With regard to the target market identification, firms should not solely rely on such quantitative criteria but sufficiently balance them with qualitative considerations.
- Manufacturers should use the list of categories as a basis for identifying the target market for their investment products. **The list of the categories is cumulative: when assessing the target market, each manufacturer should use each of those categories**.
- When detailing/describing each one of these categories, manufacturers should take into account the relationship between different categories since they all contribute to the definition of the target market for a given product.

Identification of the potential target market by the manufacturer- categories to be considered

Manufacturers should use the following list of five categories:

The type of clients to whom the product is targeted:
The firm should specify to which type of client the product is targeted. This specification should be made according to the MiFID II client categorization of “retail client”, “professional client” and/or “eligible counterparty”.

Knowledge and experience:
- The firm should specify the knowledge that the target clients should have about elements such as: the relevant product type, product features and/or knowledge in thematically related areas that help to understand the product.
- Regarding experience, the firm could describe how much practical experience target clients should have with elements such as: relevant product type, relevant product features and/or experience in thematically related areas. The firm could specify, for example, a time period for which clients should have been active in the financial markets. Knowledge and experience may be dependent on each other in some cases (i.e. an investor with limited or no experience could be a valid target client if they compensate missing experience with extensive knowledge).

Financial situation with a focus on the ability to bear losses:
The firm should specify the percentage of losses target clients should be able and willing to afford (for example, from minor losses to total loss) and if there are any additional payment obligations that might exceed the amount invested (for example, margin calls).

Identification of the potential target market by the manufacturer- categories to be considered

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Risk tolerance and compatibility of the risk/reward profile of the product with the target market:

- Basic risk-attitudes should be categorized (for example, “risk oriented or speculative”, “balanced”, “conservative”) and clearly described. Since different firms in the chain may have different approaches to defining risk, the firm should be explicit about the criteria that must be met in order to categories a client in this way.
- Firms should use the risk indicator stipulated by the PRIIPs Regulation or the UCITS Directive, where applicable, to fulfil this requirement.

Clients’ Objectives and Needs:

- The firm should specify the investment objectives and needs of target clients that a product is designed to meet, including the wider financial goals of target clients or the overall strategy they follow when investing. For example the expected investment horizon.
- A product may be designed to meet the needs of a specific age demographic, to achieve tax efficiency based on clients’ country of tax residence, or be designed with special product features to achieve specific investment objectives such as “currency protection”, “green investment”, “ethical investment”, etc., as relevant.

Depending on the characteristics of the specific product manufactured, the description of one or more of the above categories may result in the identification of a broad group of target clients that could also encompass a more restricted group. For example, if a product is considered compatible with target clients possessing general relevant knowledge and experience, it will be compatible with a sophisticated level of knowledge and experience.

Identification of the potential target market by the manufacturer-categories to be considered

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- Manufacturers should not exclude any of the five mentioned categories.

- If, in the manufacturers view, these five categories are too restrictive to identify a meaningful target market, additional categories may be added. In the decision, whether to use such additional categories or not, manufacturers may take into account the characteristics of the information-channels with distributors.

- For example, in order to facilitate the exchange of information with distributors and to foster open architecture, manufacturers may limit the use of additional categories to cases where these are essential to define a meaningful target market for the product.

- Manufacturers need to identify a potential target market. As they usually do not have direct client contact, and this means that their target market identification may be based *inter alia* on their theoretical knowledge and experience of the product.

PRODUCT GOVERNANCE - MANUFACTURERS' INITIATIVES

The manufacturers (including non-MiFID, in particular fund managers) organized themselves to create a first operational tool to facilitate the information flow to distributors necessary to meet the new regulatory obligations.

✓ *Investor type*
✓ *Knowledge and/or experience*
✓ *Ability to bear losses*
✓ *Risk tolerance*
✓ *Client objectives and needs*
✓ *Distribution strategy*
✓ *Costs & charges...*
✓ *....*

In particular, the EMT convey a standard flow of data from the manufacturer to distributor related to :

- ✓ **Product target market**
- ✓ **Product costs**

For now, there is not a standard for the returning flow from the distributor to the manufacturer about the target market (including deviation cases)

https://www.efama.org/Publications/Public/MiFID-MiFIR/EFAMA%20European%20MiFID%20Template%20%20EMT.pdf

Identification of the potential target market by the manufacturer- differentiation on the basis of the nature of the product manufactured

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The target market identification should consider the characteristics of the product including its complexity (including costs and charges structure), risk-reward profile or liquidity, or its innovative character.

For more complicated products, such as structured products with complicated return profiles, the target market should be identified with more detail. For simpler, more common products it is likely that the target market will be identified with less detail:

- For some types of investment products the manufacturer may identify the above-mentioned target market categories following a common approach for financial instruments of one type with sufficiently comparable product features (for example due to an external benchmark, or because they belong to a stock-exchange segment with certain requirements).
- Depending on the investment product, the description of one or more of the above-mentioned categories may be more generic. **The simpler a product is, the less detailed a category may be.**

In all cases, the target market must be identified at a sufficiently granular level to avoid the inclusion of any groups of investors for whose needs, characteristics and objectives the product is not compatible.

For bespoke or tailor-made products, the target market of the product will usually be the client who ordered the product unless the distribution of the product to other clients is also foreseen.

Articulation between the distribution strategy of the manufacturer and its definition of the target market

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The manufacturer shall ensure that its intended distribution strategy is consistent with the identified target and, the manufacturer needs to take reasonable steps to ensure that the financial product is distributed to the identified target market.

The manufacturer should define its distribution strategy so that this strategy favors the sale of each product to the target market of this product. This includes that, when the manufacturer can choose the distributors of its products, the manufacturer makes its best efforts to select distributors whose type of clients and services offered are compatible with the target market of the product.

In defining the distribution strategy, a manufacturer should determine the extent of clients' information necessary to the distributor to properly assess the target market for its product. Hence, the manufacturer should propose the type of investment service through which the targeted clients should or could acquire the financial instrument.

GUIDELINES FOR DISTRIBUTORS

Timing and relationship of target market assessment of the distributor with other product governance processes

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The distributor's target market identification (i.e. **the 'actual' target market for that product**) should be conducted as part of the general decision making process about the range of services and products the distributor is going to distribute.
Distributors should take responsibility to ensure, from the very beginning, the general consistency of the products that are going to be offered and the related services that will be provided with the needs, characteristics and objectives of target clients.

The decision making process about the service and product universe in combination with the target market identification process should directly influence the way in which the firm's daily business is conducted, as the management body's choices are implemented along the firm's decision chain and hierarchy.

Firms should especially focus on the investment services through which the products will be offered to their respective target markets. The nature of the products should be duly taken into account, paying particular attention to those products characterised by complexity/risk features or by other relevant features (such as, for example, illiquidity and innovation).

Timing and relationship of target market assessment of the distributor with other product governance processes

Distributors should decide:

- which products are going to be recommended (also through the provision of portfolio management) or offered or actively marketed to certain groups of clients (characterised by common features in terms of knowledge, experience, financial situation, etc.).
- which products will be made available to (existing or prospective) clients at their own initiative through execution services without active marketing, considering that in such situations the level of client information available may be very limited.

In any case, where on the basis of all information and data that may be at the distributors' disposal and gathered through investment or ancillary services or through other sources, including the information obtained from manufacturers, the distributor assesses that a certain product will never be compatible with the needs and characteristics of its existing or prospective clients, it should refrain from including the product in its product assortment (i.e. the products that will be offered, to whom, and through the provision of which investment services).

Relation between the product governance requirements and the assessment of suitability or appropriateness

KNF

The obligation of the distributor to identify the actual target market and to ensure that a product is distributed in accordance with the actual target market is not substituted by an assessment of suitability or appropriateness and has to be conducted in addition to, and before such an assessment.

The identification, for a given product, of its target market and related distribution strategy should ensure that the product ends up with the type of customers for whose needs, characteristics and objectives it had been designed, instead of another group of clients with whom the product may not be compatible.

Identification of the target market by the distributor: categories to be considered

Distributors should use the same list of categories used by manufacturers as a basis for defining the target market for their products.

Distributors should define the target market on a more concrete level and should take into account the type of clients they provide investment services to, the nature of the investment products and the type of investment services they provide.

As the manufacturer has to specify the potential target market based on its theoretical knowledge and experience with a similar product, it will determine the product's target market without specific knowledge of individual clients.

Distributors should base their target market on their information and knowledge of their own client base and the information received from the manufacturer (if any) or information that has been obtained by the distributor itself via desk research (especially in cases where the distributor is a new firm that does not yet have enough-actual information about its own clients).

Identification of the target market by the distributor: categories to be considered

KNF

Distributors should conduct a thorough analysis of the characteristics of their client base, i.e. existing clients, as well as prospective clients (for example, a distributor may have clients with bank deposits to whom they intend to offer investment services).

When refining the manufacturer's target market, the distributor should not deviate from the fundamental decisions made therein.

However, distributors cannot just rely on the manufacturer's target market without considering how the target market defined by the manufacturer would fit to their client base. For that purpose, distributors should implement and maintain a dedicated process, which needs to be run in all cases. If, as a result of the process, the distributor comes to the conclusion that the target market of the manufacturer does not need to be refined, the distributor may use the manufacturer's target market as it is.

Usually, the target market assessment of the distributor will occur after the manufacturer has communicated its target market to him. However, it is possible that manufacturer and distributor could define both the manufacturer's target market and the distributor's target market, including any review and refinement process, at the same time.

Both the manufacturer and the distributor retain their responsibility for their obligations to identify a target market.

A manufacturer has still to take reasonable steps to ensure that products are distributed to the identified target market and a distributor has to ensure that products are offered or recommended only when this is in the interest of clients.

Identification and assessment of the target market by the distributor: interaction with investment services

Distributors are required to identify and assess the circumstances and needs of the group of clients to whom they are effectively going to offer or recommend a product, so as to ensure the compatibility between that product and the respective target clients. This obligation should apply in a proportionate manner depending, not only on the nature of the product (but also on the type of investment services that firms provide.

Ex-ante assessment of the actual target market is influenced by the services provided, since it can be conducted more or less thoroughly depending on the level of client information available, which in turn depends on the type of services provided and the conduct of rules attached to their provision.

The target market assessment influences the decision on the type of services that are going to be provided in relation to the nature of the product and the circumstances and needs of the identified target clients, considering that the level of investor protection varies for different investment services, depending on the rules that apply at the point of sale. In particular, investment advice and portfolio management services allow for a higher degree of investor protection, compared to other services provided under the appropriateness regime or under execution-only.

When distributors define their product assortment, they should pay particular attention to situations where they might not be able to conduct a thorough target market assessment by virtue of the type of services they provide. In particular, where distributors only carry out execution services with the assessment of appropriateness (for example through a brokerage platform), they should consider that they will usually be able to conduct an assessment of the actual target market which is limited to the sole categories of clients’ knowledge and experience.

Identification and assessment of the target market by the distributor: interaction with investment services

This is especially relevant for:

- products characterised by complexity/risk features,
- situations where there might be significant conflicts of interest (such as in relation to products issued by entities within the firm's group or when distributors receive inducements from third parties),
- the limited level of protection afforded to clients at the point of sale by the appropriateness test (or no protection at all, in the case of execution-only).

It is most important that distributors take into due consideration all relevant information provided by the product manufacturer, both in terms of potential target market and distribution strategy.

Taking into account that the client's protection decreases when information available is not sufficient to ensure a full target market assessment, distributors may decide to let clients operate on a non-advised basis after having warned them that the firm is not in the position to assess their full compatibility with such products.

Portfolio management, portfolio approach, hedging and diversification

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When providing investment advice adopting a portfolio approach and portfolio management to the client, the distributor can use products for diversification and hedging purposes. In this context, products can be sold outside of the product target market, if the portfolio as a whole or the combination of a financial instrument with its hedge is suitable for the client.

The identification of a target market by the distributor is without prejudice to the assessment of suitability.
In certain cases, permissible deviations between the target market identification and the individual eligibility of the client may occur if the recommendation or sale of the product fulfils the suitability requirements conducted with a portfolio view as well as all other applicable legal requirements (including those relating to disclosure, identification and management of conflicts of interest, remuneration and inducements).

The distributor is not required to report sales outside of the positive target market to the manufacturer if these sales are for diversification and hedging purposes and if these sales are still suitable given the client's total portfolio or the risk being hedged.

Sales of products into the negative target market should always be reported to the manufacturer and disclosed to the client, even if those sales are for diversification or hedging purposes. Moreover, **even if for diversification purposes, sales into the negative target market should be a rare occurrence.**

Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market

Distribution of products manufactured by entities not subject to MiFID II product governance requirements

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Firms that distribute products that have not been manufactured by entities subject to the MiFID II product governance requirements are expected to perform the necessary due diligence so as to provide an appropriate level of service and security to their clients compared to a situation where the product had been designed in accordance with the MiFID II product governance requirements.
Where a product has not been designed in accordance with the MiFID II product governance requirements, this may affect the information gathering process or the target market identification:

- **Target market definition**: The distributor shall determine the target market also when the target market is not defined by the manufacturer. Therefore, even where the firm does not receive a description of the target market from the manufacturer or information on the product approval process, it has to define its "own" target market.

Distribution of products manufactured by entities not subject to MiFID II product governance requirements

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- **<u>Information gathering process:</u>** distributors shall take all reasonable steps to ensure that the level of product information obtained from the manufacturer is of a reliable and adequate standard, to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where all relevant information is not publicly available (for example, through the PRIIPs KID or a prospectus), the reasonable steps should include entering into an agreement with the manufacturer or its agent in order to obtain all relevant information enabling the distributor to carry out its target market assessment. Publicly available information may only be accepted if it is clear, reliable and produced to meet regulatory requirements. For example, information disclosed in compliance with requirements in the Prospectus Directive, the Transparency Directive, the UCITS Directive, the AIFMD Directive or third-country equivalent requirements are acceptable

The obligation is relevant for products sold on primary and secondary markets and shall **<u>apply in a proportionate manner</u>**, depending on the degree to which publicly available information is available and the complexity of the product. Thus, information about simpler, more common products, such as ordinary shares, will usually not require an agreement with the manufacturer but can be derived from the manifold information sources published for regulatory purposes for such products.

<u>Where the distributor is not in a position to obtain in any way sufficient information on products manufactured by entities not subject to the MiFID II product governance requirements, the firm would be unable to meet its obligations under MiFID II and, consequently, should refrain from including them in its product assortment</u>.

GUIDELINES ON ISSUES APPLICABLE TO BOTH MANUFACTURERS AND DISTRIBUTORS

Identification of the ‘negative’ target market and sales outside the positive target market

The firm needs to consider whether the product would be incompatible with certain target clients **(“negative” target market**).

The firm should apply the same categories and principles as stated in previous slides.

The manufacturer, who does not have a direct relationship with end-clients, will be able to identify the negative target market on a theoretical basis.

The distributor, taking into account the manufacturer’s more general negative target market as well as information on its own client base, will be in the position to identify more concretely the group of clients to whom it should not distribute that specific product. The distributor is also required to identify any group(s) of clients for whose needs, characteristics and objectives, a service related to the distribution of a certain product would not be compatible.

Identification of the 'negative' target market and sales outside the positive target market

Some of the target market characteristics used in the positive target market assessment by manufacturers and distributors will automatically lead to opposing characteristics for investors for whom the product is not compatible (for example, if a product is made for the investment objective "speculation" it will at the same time not be suitable for "low risk" objectives). **In this case, a firm could define the negative target market by stating that the product or service is incompatible for any client outside the positive target market.**

It is important to take account of the principle of proportionality. When assessing a potential negative target market, the number and detail of factors and criteria will depend on the nature, especially the complexity or the risk-reward profile, of the product (i.e. a plain vanilla product is likely to have a smaller group of possible investors for whom it is incompatible, while the group of clients for whom the financial instrument is not compatible might be large for a more complex product).

Identification of the ‘negative’ target market and sales outside the positive target market

KNF

It is expected that in the context of product governance arrangements, firms analyze ex-ante situations such as the one described, and make a responsible decision on how they are going to address them should they occur, and that client-facing employees are informed of the approach defined at management body level, so that they can comply with it.

Firms should also take into consideration the nature of the products included in the range of those they intend to offer to clients (for example, in terms of complexity/risk) and the existence of any conflicts of interest with clients (such as in the case of self-placement), as well as their business model. Some firms could, for example, consider the possibility of not allowing clients to operate if they fall within the negative target market, while letting other clients transact on a financial product that is in the ‘grey’ area, i.e. between the positive and negative target markets.

Identification of the ‘negative’ target market and sales outside the positive target market

KNF

It is important that if the distributor becomes aware, for example, through the analysis of clients’ complaints or other sources and data, that the sale of a certain product outside the target market identified ex-ante has become a significant phenomenon (for instance, in terms of number of clients involved), such input will be taken into due consideration in the course of its periodic review of the products and related services offered. In such cases, the distributor may, for example, come to the conclusion that the target market originally identified was not correct and that it needs to be reviewed or that the related distribution strategy was not appropriate for the product and has to be reconsidered.

Deviations from the target market (outside the positive or within the negative) which may be relevant for the product governance process of the manufacturer (especially those that are recurrent) should be reported to the manufacturer.

Supervisory challenges

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Different PG implementation approaches:

- European (eg. European MiFID Template – EMT) vs. national templates
- Group implementation vs. Local implementation

Overlap with other requirements on

- PRIIPS
- Investment advice
- Suitability/appropriateness
- Disclosure of information to clients
- Inducements
- Other?

Requirements refer often to individual analyses, checks, reviews of each single product

- Firms tend to automatize processes
- Streamline, standardise different concepts
- When automatic assessment or streamlining/standardising can be accepted without undermining the client’s interests

Inclusion of ESG factors in the PG

Impact of Product Intervention

INVESTMENT ADVICE IN LIGHT OF NEW PRODUCT GOVERNANCE REQUIREMENTS

KNOWLEDGE AND COMPETENCE

To whom requirements on knowledge and competence apply to?

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‚Staff’ means natural persons (including tied agents) **providing investment advice** or **giving information** about financial instruments, structured deposits, investment services or ancillary services to clients on behalf of the firm.

‚Giving information’ means directly providing information to clients about financial instruments, structured deposits, investment services or ancillary services, either upon the request of the client or at the initiative of the firm, in the context of the provision by the staff member to the client of any of the services and activities listed in the section A and B of Annex I of MiFID II.

Knowledge and competence’ means having acquired an appropriate qualification and appropriate experience to provide the relevant services.

‘Appropriate qualification’ means a qualification or other test or training course that meets the criteria set out by the guidelines.

‘Under supervision’ means providing the relevant services to clients under the responsibility of a staff member who has both an appropriate qualification and appropriate experience. The staff member can work under supervision for a maximum period of 4 years

Appropriate experience under Polish law

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‘**Appropriate experience’** means that a member of staff has successfully demonstrated the ability to perform the relevant services through previous work. This work must have been performed, on a full time equivalent basis, for a minimum period of 6 months.

- ESMA Guidelines for the assessment of knowledge and competence do not distinguish this period depending on kind of staff activity (ie. giving information and giving investment advice).
- There also no distinction depending on complexity of financial instrument

Polish approach:

- to give information on simple, non-complex products including treasury bonds - at least 6 month of experience is required,
- 12 months to give information on any financial instruments (no matter how complex they are),
- 18 months to advice on non - complex instruments and treasury bonds,
- 24 months to advice on complex instruments

Testing knowledge and competence of staff

- Both, internal and external tests of staff knowledge are allowed
- Additional internal policies/rules to follow are required:
    - on testing its staff,
    - confirmation of their knowledge and competence,
    - rules and criteria applicable for choosing external training firm

General rules

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1) The level and intensity of knowledge and competence expected for those providing investment advice should be of a higher standard than those that only give information on investment products and services.

2) Staff providing relevant services should possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards.

3) Staff should know, understand and apply firm's internal policies and procedures designed to ensure compliance with MiFID II.

4) The compliance function should assess and review compliance with these guidelines. This review should be included in the report to the management body on the implementation and effectiveness of the overall control environment for investment services and activities.

Criteria for knowledge and competence for staff giving information about investment products, investment services or ancillary services

KNF

Firms should ensure that staff giving information about investment products, investment services or ancillary services that are available through the firm have the necessary knowledge and competence to:

a) understand the key characteristics, risk and features of those investment products available through the firm, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterized by higher levels of complexity;
b) understand the total amount of costs and charges to be incurred by the client in the context of transactions in an investment product, or investment services or ancillary services;
c) understand the characteristics and scope of investment services or ancillary services;
d) understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to clients;
e) understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information;
f) understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
g) understand issues relating to market abuse and anti-money laundering;
h) assess data relevant to the investment products on which they provide information to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
i) understand specific market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets;
j) have a basic knowledge of valuation principles for the type of investment products in relation to which the information is provided.

Criteria for knowledge and competence for staff giving investment advice

KNF

Firms should ensure that staff giving investment advice have the necessary knowledge and competence to:

a) understand the key characteristics, risk and features of the investment products being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions. Particular care should be taken when providing advice with respect to products characterized by higher levels of complexity;
b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
c) fulfil the obligations required by firms in relation the suitability requirements including the obligations as set out in the Guidelines on certain aspects of the MiFID suitability requirements
d) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against potential changes that may have occurred since the relevant information was gathered;
e) understand how financial markets function and how they affect the value and pricing investment products offered or recommended to clients;

Criteria for knowledge and competence for staff giving investment advice

KNF

f) understand the impact of economic figures, national/regional/global events on markets and on the value of investment products being offered or recommended to clients;

g) understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;

h) understand issues relating to market abuse and anti-money laundering;

i) assess data relevant to the type investment products offered or recommended to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;

j) understand specific market structures for the type investment products offered or recommended to clients and where relevant their trading venues or the existence of any secondary markets;

k) have a basic knowledge of valuation principles for the type of investment products offered or recommended to clients;

l) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives.

Organisational requirements for assessment, maintenance and updating of knowledge and competence

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Firms should:

a) ensure that staff providing relevant services to clients are assessed through the successful completion of an appropriate qualification and having gained appropriate experience in the provision of relevant services to clients;

b) carry out an internal or external review, on at least an annual basis, of staff members' development and experience needs, assess regulatory developments and take action necessary to comply with these requirements. This review should also ensure that staff possess an appropriate qualification and maintain and update their knowledge and competence by undertaking continuous professional

c) development or training for the appropriate qualification as well as specific training required in advance of any new investment products being offered by the firm;

d) ensure that they submit to NCA, on request, records concerning knowledge and competence of staff providing relevant services to clients;

Organisational requirements for assessment, maintenance and updating of knowledge and competence

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e) ensure that when a member of staff has not acquired the necessary knowledge and competence in the provision of the relevant services, this staff member cannot provide the relevant services. <u>However, where this member of staff has not acquired the appropriate qualification or the appropriate experience to provide the relevant services or both, this staff member can only provide the relevant services under supervision. The level and intensity of supervision should reflect the relevant qualification and experience of the staff member being supervised and this could include, where appropriate, supervision during clients meeting and other forms of communication such as telephone calls and e-mails</u>;
f) ensure that, in situations under letter d., the staff member supervising other staff has the necessary knowledge and competence required by these guidelines and the necessary skills and resources to act as a competent supervisor;
g) ensure that the supervision provided is tailored to the services to be provided by that staff member and cover the requirements of these guidelines relevant to those services;
h) ensure that the supervisor takes responsibility for the provision of the relevant services when the staff member under supervision is providing relevant services to a client, as if the supervisor is providing the relevant services to the client, including signing-off the suitability report where advice is being provided;
i) ensure that the staff member, who has not acquired the necessary knowledge or competence in the provision of the relevant services, cannot provide those relevant services under supervision for a period exceeding 4 years (or shorter if required by the relevant national law).

RECORDING REQUIREMENTS

Records keeping

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An investment firm shall arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the competent authority to assess whether the investment firm has complied with all obligations including those with respect to clients or potential clients.

Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

Such telephone conversations and electronic communications shall also include those that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

Records keeping

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What about other services? The most problematic one in practice is investment advice.

ESMA Q&A: „ *In practice, other investment services like investment advice (paragraph (5) of Annex I, Section A) may be provided at the point when there is an intention to provide a client order services. In this case, the content of the advisory service would need to be recorded, as it would de facto be in scope of Article 16(7) of MiFID II."*

An investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment firm.

An investment firm shall notify new and existing clients that telephone communications or conversations between the investment firm and its clients that result or may result in transactions will be recorded. Such a notification may be made once, before the provision of investment services to new and existing clients.

Records keeping

Orders may be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders should be considered equivalent to orders received by telephone.

An investment firm should take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy.

The records kept should be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.

Recording of telephone conversations or electronic communications

Investment firms shall establish, implement and maintain an effective recording of telephone conversations and electronic communications policy, set out in writing, and appropriate to the size and organisation of the firm, and the nature, scale and complexity of its business. The policy shall include the following content:

a) the identification of the telephone conversations and electronic communications, including relevant internal telephone conversations and electronic communications;
b) the specification of the procedures to be followed and measures to be adopted where exceptional circumstances arise and the firm is unable to record the conversation/communication on devices issued, accepted or permitted by the firm. Evidence of such circumstances shall be retained and shall be accessible to competent authorities.

Recording of telephone conversations or electronic communications

KNF

Investment firms should :

a) ensure that the management body has effective oversight and control over the policies and procedures relating to the firm's recording of telephone conversations and electronic communications;
b) ensure that the arrangements to comply with recording requirements are technology- neutral;
c) periodically evaluate the effectiveness of the firm's policies and procedures and adopt any such alternative or additional measures and procedures as are necessary and appropriate. At a minimum, such adoption of alternative or additional measures shall occur when a new medium of communication is accepted or permitted for use by the firm;
d) keep and regularly update a record of those individuals who have firm devices or privately owned devices that have been approved for use by the firm;
e) educate and train employees in procedures governing the recording requirements;
f) periodically monitor the records of transactions and orders subject to these requirements, including relevant conversations.

Records keeping

KNF

Before investment firms provide investment services and activities relating to the reception, transmission and execution of orders to new and existing clients, firms shall inform the client of the following:

a) that the conversations and communications are being recorded; and
b) that a copy of the recording of such conversations with the client and communications with the client will be available on request for a period of five years and, where requested by the competent authority, for a period of up to seven years.

This information should be presented in the same language(s) as that used to provide investment services to clients.

Investment firms shall record in a durable medium all relevant information related to relevant face-to-face conversations with clients. The information recorded shall include at least the following:
a) date and time of meetings;
b) location of meetings;
c) identity of the attendees;
d) initiator of the meetings; and
e) relevant information about the client order including the price, volume, type of order and when it shall be transmitted or executed.

Records shall be stored in a durable medium, which allows them to be replayed or copied and must be retained in a format that does not allow the original record to be altered or deleted.

The period of time for the retention of a record shall begin on the date when the record is created.

SAFEGUARDING OF CLIENT FINANCIAL INSTRUMENTS AND FUNDS

Safeguarding of client financial instruments and funds

Investment firms :

a) must keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets;
b) must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients and that they may be used as an audit trail;
c) must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;
d) must take the necessary steps to ensure that any client financial instruments deposited with a third party are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;
e) must take the necessary steps to ensure that client funds deposited, in a central bank, a credit institution or a bank authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;
f) must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

Depositing client financial instruments

KNF

Investment firms are allowed to deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that the firms exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

They should take into account the expertise and market reputation of the third party as well as any legal requirements related to the holding of those financial instruments that could adversely affect clients' rights.

Where an investment firm proposes to deposit client financial instruments with a third party, investment firm only deposits financial instruments with a third party in a jurisdiction where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and that third party is subject to this specific regulation and supervision.

Investment firms cannot deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person unless one of the following conditions is met:

a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country;
b) where the financial instruments are held on behalf of a professional client, that client requests the firm in writing to deposit them with a third party in that third country.

Those requirements also apply when the third-party has delegated any of its functions concerning the holding and safekeeping of financial instruments to another third-party.

Depositing client funds

Investment firms, on receiving any client funds, promptly to place those funds into one or more accounts opened with any of the following:

(a) a central bank;
(b) a credit institution authorised in accordance with Directive 2013/36/EU;
(c) a bank authorised in a third country;
(d) a qualifying money market fund.

This requirement do not apply to a credit institution authorised under Directive 2013/36/EU in relation to deposits within the meaning of that Directive held by that institution.

Where investment firms do not deposit client funds with a central bank, they exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds and they consider the need for diversification of these funds as part of their due diligence.

Investment firms take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights.

Depositing client funds

KNF

Member States shall require that, where investment firms deposit client funds with a credit institution, bank or money market fund of the same group as the investment firm, they limit the funds that they deposit with any such group entity or combination of any such group entities **so that funds do not exceed 20 % of all such funds**.

An investment firm may not comply with this limit where it is able to demonstrate that, in view of the nature, scale and complexity of its business, and also the safety offered by the third parties, and including in any case the small balance of client funds the investment firm.

Investment firms shall periodically review the assessment and shall notify their initial and reviewed assessments to NCAs.

WHISTLEBLOWING

Reporting breaches

KNF

Investment firms establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities.

The mechanisms should include at least:

a) specific procedures for the receipt of reports on breaches and their follow-up;
b) appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach;
d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

Institutions must have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

PERSONAL TRANSACTIONS

Scope of personal transactions

Personal transaction means a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

a) the relevant person is acting outside the scope of the activities he carries out in his professional capacity;
b) the trade is carried out for the account of any of the following persons:

(i) the relevant person;
(ii) any person with whom he has a family relationship, or with whom he has close links;
(iii) a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

Scope of personal transactions

KNF

Investment firms shall establish, implement and maintain adequate arrangements aimed at preventing situation in which any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm.

Relevant persons should not enter into a personal transaction which meets at least one of the following criteria: (a) that person is prohibited from entering into it under Regulation (EU) No 596/2014; (b) it involves the misuse or improper disclosure of that confidential information; (c) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2014/65/EU.

Relevant persons should not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person.

Investment firms should ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps: (a) to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, (b) to advise or procure another person to enter into such a transaction.

Scope of personal transactions

- each relevant person must be aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure;

- the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;

- a record is kept of the personal transaction notified to the firm or identified by it, including any authorization or prohibition in connection with such a transaction. In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

BEST EXECUTION OF CLIENTS’ ORDERS

Best execution obligation

When an investment firm executes an order following specific instructions from the client, **it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the client instructions relate**.

The fact that the client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the investment firm from its best execution obligations in respect of any other parts or aspects of the client order that are not covered by such instructions.

Best execution obligation

An investment firm should not induce a client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, when the firm ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that client. However, this should not prevent a firm inviting a client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm.

The obligation to deliver the best possible result when executing client orders applies in relation to all types of financial instruments. However, given the differences in market structures or the structure of financial instruments, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of financial instruments.

For example, transactions involving a customised OTC financial instrument that involve a unique contractual relationship tailored to the circumstances of the client and the investment firm may not be comparable for best execution purposes with transactions involving shares traded on centralised execution venues. **As best execution obligations apply to all financial instruments, irrespective of whether they are traded on trading venues or OTC, investment firms should gather relevant market data in order to check whether the OTC price offered for a client is fair and delivers on best execution obligation.**

Best execution criteria

KNF

When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in Article 27(1) of Directive 2014/65/EU:

a) the characteristics of the client including the categorisation of the client as retail or professional;
b) the characteristics of the client order, including where the order involves a securities financing transaction (SFT);
c) the characteristics of financial instruments that are the subject of that order;
d) the characteristics of the execution venues to which that order can be directed.

'execution venue' includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

An investment firm must take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

When executing orders or taking decision to deal in OTC products including bespoke products, the investment firm shall check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client

Investment firms, when providing:

- portfolio management, should act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.
- the service of reception and transmission of orders, shall act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client

Investment firms shall establish and implement a policy identifying, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified shall have execution arrangements that enable the investment firm to comply with its obligations when it places or transmits orders to that entity for execution.

Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, **the top five investment firms in terms of trading volumes** where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

Investment firms shall monitor on a regular basis the effectiveness of the policy and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies. Investment firms shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

Execution policy

KNF

Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in Article 27(1) of Directive 2014/65/EU, or the process by which the firm determines the relative importance of those factors.
b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;
c) a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; The information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved in a consistent basis when reviewing the adequacy of its policy and arrangements;
d) how the execution factors of price costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;
e) where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;
f) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

Summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients. That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium).

Execution policy

Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.

Where investment firms invite clients to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

Investment firms shall only receive third-party payments that comply with Article 24(9) of Directive 2014/65/EU and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

Where an investment firm charges more than one participant in a transaction, and its implementing measures, the firm shall inform its clients of the value of any monetary or non-monetary benefits received by the firm.

CONFLICT OF INTEREST

Conflicts of interest potentially detrimental to a client

KNF

Investment firms should take into account, by way of minimum criteria, whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
d) the firm or that person carries on the same business as the client;

Conflicts of interest potentially detrimental to a client

KNF

a) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services.

Disclosure obligation - where the effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented. The disclosure should:

a) clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented.
b) include specific description of the conflicts of interest that arise in the provision of investment and/or ancillary services, taking into account the nature of the client to whom the disclosure is being made.
c) explain the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflicts of interest arise.

Conflicts of interest policy

Investment firms shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business. Where the firm is a member of a group, the policy shall also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

The conflicts of interest policy established should include the following content:

- it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients;
- it must specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

Conflicts of interest policy

The procedures shall include at least those items in the following list that are necessary for the firm to ensure the requisite degree of independence:

a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;
c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;
e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

DURABLE MEDIUM

Durable medium

KNF

25th January 2017
(https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CJ0375)
Court clarifies that an information provided „through the electronic mailbox of an online banking website, may not be considered to have been provided on a durable medium within the meaning of those provisions, unless these two conditions are met:

- that that website allows the user to store information addressed to him personally in such a way that he may access it and reproduce it unchanged for an adequate period, without any unilateral modification of its content by that service provider or by another professional being possible; and
- if the payment service user is obliged to consult that internet website in order to become aware of that information, the transmission of that information is accompanied by active behaviour on the part of the provider aimed at drawing the user's attention to the existence and availability of that information on that website

In the event of the payment service user being obliged to consult such a website in order to become aware of the relevant information, that information is merely made available to that user within the meaning of the first sentence of Article 36(1) of Directive 2007/64, as amended by Directive 2009/111, when the transmission of that information is not accompanied by such active behaviour on the part of the payment service provider. "

INDUCEMENTS (GENERAL RULES AND PRACTICAL EXAMPLES) FEEDBACK FROM DISCUSSION WITH MARKET’S PARTICIPANTS

Inducements under MiFID II

KNF

Inducements are prohibited where the client's interest is compromised

Prohibited per nature for:

"INDEPENDENT" ADVISE	PORTFOLIO MANAGEMENT

If received, all fees must be returned in full to the client:

- as soon as reasonably possible
- all sums received from third parties in relation to these services
- based on a policy to ensure that third parties payments received are allocated and transferred to each client
- clients should be informed about the monetary amounts transferred to them through regular account statements

Inducements under MiFID II – permitted cases

Inducements paid or received by investment firms providing services <u>other that portfolio management and investment advice on an independent basis</u> may be accepted provided that the following cumulative conditions are met:

1) They are designed to enhance the quality of the relevant service to the client;

2) They do not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

3) They must be clearly disclosed to the client, in accordance with Article 12 of the Delegated Directive

   a) The existence, nature and amount of the payment (or the calculation if it cannot be ascertained, with ex-post confirmation)

   b) In a comprehensive, accurate and understandable manner

4) The firm reports the amounts on an annual basis

<u>Enhancement verification:</u>

- Provision of an additional or higher level service, proportional to the inducement level, e.g. access to added-value tools like on-line information
- Provides an ongoing benefit to the client in case of ongoing inducement
- Provide a tangible benefit to the client, not only to the firm

Firm must: (i) describe/demonstrate how received inducement enhance the quality and (ii) keep a list of all commissions and benefits from third parties.

Inducements under MiFID II

KNF

The <u>minor</u> non-monetary benefits are allowed if:

a) are capable of enhancing the quality of service provided to a client and
b) are of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client shall be clearly disclosed.

Examples of minor non-monetary benefits

a) written material from a third party that is commissioned and paid for by an corporate to promote a new issuance (e.g. road shows),
b) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service,

Non-monetary benefit - disclosure rules:

a) Non-monetary benefits shall be priced and disclosed
b) Minor non-monetary benefits may be described in a generic way