

BY EMAIL:

Mr Salvatore Gnoni

Head of the Investor Protection and Intermediaries Unit

European Securities and Markets Authority

7 October 2022

Re: Irish Fund's response to: ESMA Consultation on Review of the Guidelines on MiFID II product governance requirements (ESMA 35-43-3114)
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The Irish Funds Industry Association (Irish Funds) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 17,000 professionals across every county in Ireland, providing services to over 8,400 Irish regulated investment funds with assets of just under EUR 4 trillion.

Irish Funds has been working closely with the European Fund and Asset Management Association (EFAMA) on a range of MiFID related sustainability topics including EFAMA's response to ESMA's consultation paper - Consultation on Review of the Guidelines on MiFID II product governance requirements (the "Guidelines"). Irish Funds supports the positions which EFAMA has taken in its response to this consultation and we herewith attach a copy of the EFAMA response.

We welcome the fact that the newly introduced concepts and requirements around sustainability are consistent in both the finalised suitability guidelines and the proposed product governance guidelines. The suitability process is partially built on the target market information and must be aligned to ensure that meaningful processes can be set up by firms.

As we have already stated in our response to ESMA's Consultation Paper - Guidelines on certain aspects of the MiFID II suitability requirements (ESMA 35-43-2998), submitted in April of this year, there has been an overall sequencing issue in relation to legislative requirements which apply to firms impacted by these Guidelines. While MiFID II's new suitability and product governance processes were meant to be based on available SFDR data, this data delivery has now been delayed to January 2023 (with the first available data only becoming available in Q1 2023) but the subsequent MiFID II timelines were not adapted accordingly. The issues around the timing and availability of reliable data may seriously impair the ability of firms to fully implement the Guidelines based on the current timeframes. This is particularly the case regarding percentages of sustainable investments and details regarding consideration of principal adverse impacts (PAI).

In relation to “Clustering”, we strongly agree with EFAMA’s request that ESMA looks to include examples of good practice as to how to group similar financial products based on their sustainability related objectives/characteristics in Annex IV – Good practices.

We would also request the inclusion of an additional case study in Annex V which addresses a “Complex UCITS.”

We welcome the publication on 23 September, 2022 of ESMA’s “Final Report on Guidelines on certain aspects of the MiFID II suitability requirements” and also welcome the approach taken by ESMA whereby those guidelines will apply six months after the date of the publication on ESMA’s website in all EU official languages. We strongly encourage ESMA to adopt a similar approach to the application of the revised Guidelines on product governance once they have been finalised.

However, we are concerned in relation to the application date of the sustainability-related amendments to the MiFID II Delegated Directive by 22 November 2022 given that the final Guidelines will not be published until 2023 and it is not clear when we will see the European Commission’s response to the recent ESAs questions, some of which have implications on what the manufacturers can specify as the sustainability-related objectives their products are compatible with. Therefore, in order to address these concerns, we ask ESMA to publish guidance to national competent authorities, setting out the expectation that they will not prioritise their supervisory actions in relation to the implementation of the MiFID II requirements regarding the incorporation of sustainability-related amendments within product governance until implementation instructions are clarified and finalised.

We are happy to discuss any of the points above in more detail.

Yours sincerely,

Conor Kilroy
Irish Funds