

**The Consumer Duty**

## Chapter 2A

# The Consumer Duty

## 2A.3 Consumer Duty: retail customer outcome - products and services

### General nature of product governance obligations

- 2A.3.1 **G** The product governance obligations on *firms* under *Principle 12* are general in nature and should be considered alongside any other legal or regulatory obligations that may apply, for example any marketing restrictions in relation to the *product*.

### Manufacturer product governance arrangements

- 2A.3.2 **R** A *manufacturer* must maintain, operate and review a process for the approval of:

- (1) a *product*; and
- (2) significant adaptations of a *product*,

in each case before it is marketed or *distributed* to *retail customers*.

- 2A.3.3 **G** ■ PRIN 2A.3.2R includes any *product* which is a new *product* manufactured on or after 31 July 2023, or an *existing product*. In relation to an *existing product* "marketing" or "distributing" includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

### Manufacturers: product approval process for products that are not closed products

- 2A.3.4 **R** For each *product* that is not a *closed product*, a *manufacturer's* product approval procedures must:
- (1) specify the *target market* for the *product* at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *product*;
  - (2) take account of any particular additional or different needs, characteristics and objectives that might be relevant for *retail customers* in the *target market* with characteristics of vulnerability;
  - (3) ensure that all relevant risks to the *target market*, including any relevant risks to *retail customers* with characteristics of vulnerability, are assessed;

- (4) ensure that the design of the *product*:
  - (i) meets the needs, characteristics and objectives of the *target market*;
  - (ii) does not adversely affect groups of *retail customers* in the *target market*, including groups of *retail customers* with characteristics of vulnerability; and
  - (iii) avoids causing foreseeable harm in the *target market*;
- (5) ensure that the intended distribution strategy is appropriate for the *target market*; and
- (6) require the *manufacturer* to take all reasonable steps to ensure that the *product* is *distributed* to the identified *target market*.

**Manufacturers: product approval process for closed products**

- 2A.3.5 **R**
  - (1) A *manufacturer* of a *closed product* must maintain, operate and review a process to assess and regularly review whether any aspect of the *product* results in the *firm* not complying with the cross-cutting obligations (■ PRIN 2A.2) in relation to existing *retail customers*.
  - (2) The *manufacturer's* process in (1) does not have to comply with ■ PRIN 2A.3.2R, ■ PRIN 2A.3.4R, ■ PRIN 2A.3.7R, ■ PRIN 2A.3.9R, ■ PRIN 2A.3.10R, ■ PRIN 2A.3.11R or ■ PRIN 2A.3.12R.

- 2A.3.6 **R** The *manufacturer's* process must also assess and regularly review whether the *closed product* affects groups of *retail customers* in different ways and in particular whether any *retail customers* in the *target market* with characteristics of vulnerability are adversely affected by any aspect of the *product*.

**Manufacturer: review**

- 2A.3.7 **R** A *manufacturer* must regularly review its *products* taking into account any event that could materially affect the potential risk to the *target market*. In doing so, the *manufacturer* must assess at least the following:
  - (1) whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability; and
  - (2) whether the intended distribution strategy remains appropriate, including whether the *product* is being *distributed* to the *target market* or reaching *retail customers* outside the *target market*.

**Manufacturer: action following review of products**

- 2A.3.8 **R** Where a *manufacturer* identifies any circumstances related to the *product* that may adversely affect *retail customers*, the *manufacturer* must:
  - (1) take appropriate action to mitigate the situation and prevent any further harm; and

- (2) where appropriate, promptly inform other relevant *persons* in the distribution chain about the circumstances that led to action being taken and the remedial action taken.

### Manufacturers: testing products

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- (1) *Manufacturers* must test their *products* appropriately, including scenario analyses where relevant.
- (2) A *manufacturer* must, as part of discharging its obligations in (1), assess whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability.
- (3) *Manufacturers* must test their *products* in a qualitative manner and, depending on the type and nature of the *product* and the related risk of detriment to *retail customers*, quantitative manner.

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If the results of the testing show that the *product* does not meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* in the *target market* with characteristics of vulnerability:

- (1) in relation to a new *product* or a significant adaptation of an *existing product*, the *manufacturer* must not bring the new or adapted *product* to the market;
- (2) in relation to an *existing product*, it must immediately:
- cease marketing or distributing the *product* (whether directly or indirectly);
  - cease any renewals for existing *retail customers*, provided that existing *retail customers* are easily able to move to an alternative *product* that provides at least the same level of benefit at an equivalent cost to the customer, whether with the *firm* or with another *firm*; and
  - (where the *firm* intends to continue to market and *distribute* the *product*), make such changes as are necessary for the *product* to meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* in the *target market* with characteristics of vulnerability.

### Manufacturers: collaborating on manufacture

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Where *firms* collaborate to *manufacture* a *product*, they must set out in a written agreement their respective roles and responsibilities in the product approval process in ■ PRIN 2A.3.

**Manufacturer: selecting distribution channels and providing information to distributors**

- 2A.3.12 **R**
  - (1) A *manufacturer* must select distribution channels that are appropriate for the *target market*.
  - (2) A *manufacturer* must provide each *distributor* with adequate information in good time to enable it to comply with the rules applicable to it in this section.
  - (3) The information to be made available under (2) includes all appropriate information regarding the *product* and the product approval process from time to time to enable the *distributor* to comply with ■ PRIN 2A.3.16R.

2A.3.12A **G** A *manufacturer* that is a *manager* is reminded of its obligations under ■ ESG 4.1.8R and ■ ESG 5.2.9R in meeting its obligations under ■ PRIN 2A.3.12R.

**Distributors: unregulated manufacturer**

2A.3.13 **R** Where a *distributor* distributes a *product* manufactured by a person to whom the *rules* in ■ PRIN 2A.3 do not apply, it must take all reasonable steps to comply with ■ PRIN 2A.3.14R to ■ 2A.3.23G.

**Distributor: distribution arrangements**

- 2A.3.14 **R** A *distributor* must maintain, operate and review product distribution arrangements for each *product* it *distributes* that:
  - (1) avoid causing and, where that is not practical, mitigates foreseeable harm to *retail customers*;
  - (2) support a proper management of conflicts of interest; and
  - (3) ensure the needs, characteristics and objectives of the *target market* are duly taken into account.

2A.3.15 **G** ■ PRIN 2A.3.14R includes any *product* whether a new *product* distributed on or after 31 July 2023, or an *existing product*. In relation to an *existing product*, “distributes” includes reference to any future distribution activity regardless of whether the *product* has previously been made available for distribution, for example, renewing a contract with an existing *retail customer*.

**Distributors: obtaining information from manufacturers**

- 2A.3.16 **R** A *distributor* must ensure that the product distribution arrangements contain effective measures and procedures to obtain sufficient, adequate and reliable information from the *manufacturer* about the *product* to:
  - (1) understand the characteristics of the *product*;
  - (2) understand the identified *target market*;
  - (3) consider the needs, characteristics and objectives of any *retail customers* in the *target market* with characteristics of vulnerability;

- (4) identify the intended distribution strategy for the *product*; and
- (5) ensure the *product* will be *distributed* in accordance with the needs, characteristics and objectives of the *target market*.

2A.3.16A **G** A *distributor* is reminded of its obligations under ■ ESG 4.1.16R to ■ ESG 4.1.19R in meeting its obligations under ■ PRIN 2A.3.16R.

**Distributors: specific distribution strategy**

- 2A.3.17 **R**
- (1) This *rule* applies where a *distributor* sets up or implements a specific distribution strategy to supplement the *manufacturer's* strategy under ■ PRIN 2A.3.4R(5).
  - (2) Any strategy set up or implemented by a *distributor* must be consistent with:
    - (a) the *manufacturer's* intended distribution strategy; and
    - (b) the identified *target market*.

**Distributors: providing sales information to manufacturers**

2A.3.18 **R** To support *product* reviews carried out by *manufacturers*, a *distributor* must, upon request, provide *manufacturers* with relevant information including, where appropriate, sales information and information on the regular reviews of the product distribution arrangements.

**Distributors: review**

- 2A.3.19 **R**
- (1) A *distributor* must regularly review its distribution arrangements to ensure that they are still appropriate and up to date.
  - (2) When reviewing the *distribution* arrangements, a *distributor* must verify that it is only *distributing* each *product* to the identified *target market*.

**Distributor: action following review of products**

- 2A.3.20 **R** Where a *distributor* identifies an issue following a review, it must:
- (1) make appropriate amendments to the product distribution arrangements;
  - (2) where harm has been identified, take appropriate action to mitigate the situation and prevent any further harm; and
  - (3) promptly inform all relevant *persons* in the distribution chain about any action taken.

**Vested rights**

2A.3.21 **R** Where a *product* has existing contracts entered into before 31 July 2023, unless the *firm* has identified a breach of *rules* in force at the time, the appropriate action a *firm* must take under ■ PRIN 2A.3.8R or ■ PRIN 2A.3.20R

does not require a *firm* to waive its vested rights under those existing contracts.

**2A.3.22** **G** For the purposes of **■ PRIN 2A.3.21R**, vested rights are likely to include the following:

- (1) payments already due under the terms of the contract;
- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.

**2A.3.23** **G** Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

### Application of the product governance outcome

**2A.3.24** **R** **■ PRIN 2A.3** does not apply to any *firm* subject to **■ PROD 3**, **■ PROD 4**, or **■ PROD 7** for any *product* they *manufacture* or *distribute* that falls within the scope of the relevant *PROD* chapter.

**2A.3.25** **G** *Products* within scope of *PROD* include any *product* significantly adapted since the relevant *PROD* rules came into force, *legacy non-investment insurance* products and *funeral plans* which were existing products as of 29 July 2022.

**2A.3.26** **R** A *closed product* not already subject to *PROD* must follow the *closed product rules* set out in **■ PRIN 2A.3.5R** to **■ PRIN 2A.3.6R** and **■ 2A.3.21R** to **■ PRIN 2A.3.23G**.

**2A.3.27** **G** A *closed product* will already be subject to *PROD* if it is:

- (1) a *financial instrument* or *structured deposit* manufactured by a *firm* subject to **■ PROD 3** on or after 3 January 2018;
- (2) an insurance product *manufactured* on or after 1 October 2018 or a *legacy non-investment insurance product*; or
- (3) a *funeral plan product* manufactured on or after 29 July 2022.

**2A.3.28** **R** **■ PRIN 2A.3** does not apply to both:

- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant authorised fund or sub-fund is in the process of winding up or termination under, or in accordance with, **■ COLL 7.3**, **■ COLL 7.4**, or **■ COLL 7.4A**; and
- (2) *units* or *shares* in a *fund* or *sub-fund* which is not an *authorised fund* or a *sub-fund* of such a scheme or *AIF*, where the relevant *fund* or

*sub-fund* is in a process of winding up or termination which is equivalent to that referred to in (1).

### Compliance with other Handbook provisions

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A *firm* which either:

- (1) conducts business in relation to *products* that would be covered by chapters in *PROD* if they were *manufactured* after the date the relevant chapter in *PROD* came into force; or
- (2) is subject to ■ PROD 1.3.2R,

may choose whether to apply either the processes set out in the relevant chapter of *PROD* that applies to the *product* (■ PROD 3 for *financial instruments* and *structured deposits* and ■ PROD 4 for insurance products) or the processes set out in ■ PRIN 2A.3. ■ PRIN 2A.3.30E sets out the circumstances where a *firm* that chooses to comply with the relevant chapter of *PROD* is likely to be considered in breach of ■ PRIN 2A.3.

2A.3.30

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- (1) This provision applies to:
  - (a) any *firm* to which ■ PROD 1.3.2R applies;
  - (b) a *manufacturer* of an *existing product* manufactured before 3 January 2018, which is a *financial instrument* or a *structured deposit*; and
  - (c) a *manufacturer* of an *existing product* manufactured before 1 October 2018 which is an insurance product, but which is not a *legacy non-investment insurance product*.
- (2) For *firms* within (1)(a) or (b), where the *firm* is following the provisions of ■ PROD 3, contravention of ■ PROD 3 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.
- (3) For *firms* within (1)(c), where the *firm* is following the provisions of ■ PROD 4, contravention of ■ PROD 4 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.