3.3 Distribution of products and investment services

General

3.3.1 R A distributor must:

(1) understand the financial instruments it distributes to clients;

(2) assess the compatibility of the financial instruments with the needs of the clients to whom it distributes investment services, taking into account the manufacturer's identified target market of end clients; and

(3) ensure that financial instruments are distributed only when this is in the best interests of the client (see § COBS 2.1.1R(1)).

[Note: article 24(2) of MiFID]

3.3.2 G A distributor should consider what impact the selection of a given manufacturer could have on the end client in terms of charges or the financial strength of the manufacturer, or possibly, where information is available to the distributor, how efficiently and reliably the manufacturer will deal with the distributor or end client at the point of sale (or subsequently, such as when queries/complaints arise, claims are made, or a financial instrument reaches maturity).

Obtaining information from manufacturers

3.3.3 R Distributors must obtain from MiFID manufacturers information to gain the necessary understanding and knowledge of the financial instruments they intend to distribute in order to ensure that the financial instruments will be distributed in accordance with the needs, characteristics and objectives of the target market.

[Note: article 16(3) MiFID and article 10(2) MiFID Delegated Directive]

3.3.4 G In ensuring that they have obtained sufficient information about the financial instruments they distribute and in ensuring they understand the financial instruments or investment services distributed, distributors:

(1) should consider whether they understand the materials provided by the manufacturer or distributor earlier in the sales chain;
(2) should ask the manufacturer to supply additional information or training where this seems necessary to understand the financial instrument or investment service adequately;

(3) should not distribute the financial instrument or investment service if they do not understand it sufficiently; and

(4) when providing information to another distributor in a distribution chain, should consider how the further distributor will use the information, such as whether it will be given to end clients. Firms should consider what information the further distributor requires and the likely level of knowledge and understanding of the further distributor and what medium may suit it best for the transmission of information.

Distributing financial instruments manufactured by non-MiFID firms, including third country firms

3.3.5 Distributors must take all reasonable steps to comply with PROD 3.3 when distributing financial instruments manufactured by any firm to which MiFID manufacturer product governance requirements (PROD 3.2 or equivalent requirements of another EEA State) do not apply.

(2) As part of this, distributors must put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the manufacturer about the financial instruments to ensure that they will be distributed in accordance with the characteristics, objectives and needs of the target market.

(3) This rule applies to financial instruments sold on either the primary or secondary market.

3.3.6 The obligation to obtain adequate and reliable information applies proportionately depending on:

(1) the degree to which publicly available information is obtainable; and

(2) the complexity of the financial instrument.

[Note: articles 10(1) and 10(2) of the MiFID Delegated Directive]

3.3.7 Where information relevant to the obligation in PROD 3.3.5R is not publicly available, distributors must take all reasonable steps to obtain such relevant information from the manufacturer or its agent.

3.3.8 Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the transparency rules or the Prospectus Regulation.

[Note: article 10(2) of the MiFID Delegated Directive]
## Target market and distribution strategy

### 3.3.9 Distributors must determine the target market for the respective financial instrument, even if the target market was not defined by the manufacturer.

[Note: article 10(1) of the MiFID Delegated Directive]

### 3.3.10 Distributors must identify the target market and their distribution strategy using:

1. the information obtained from manufacturers; and
2. information they have on their own clients.

### 3.3.11 In identifying the target market and creating a distribution strategy, distributors should consider:

1. the nature of the financial instruments to be offered or recommended and how they fit with end clients’ needs and risk appetite;
2. the impact of charges on end clients;
3. the financial strength of the manufacturer; and
4. where information is available on the manufacturer’s processes, how efficiently and reliably the manufacturer will deal with the end client at the point of sale or subsequently, such as when complaints arise, claims are made or the financial instrument reaches maturity.

### 3.3.12 The target market identified by distributors for each financial instrument should be identified at a sufficiently granular level.

### 3.3.13 Where a distributor is part of a distribution chain, the information referred to in PROD 3.3.10R(2) should include information on the intended end client.

### 3.3.14 Where a firm acts both as a manufacturer and a distributor, only one target market assessment is required.

[Note: article 10(2) of the MiFID Delegated Directive]

### 3.3.15 Distributors must have in place adequate product governance arrangements to ensure that:

1. the financial instruments and investment services they intend to distribute are compatible with the needs, characteristics and objectives of the identified target market; and
2. the intended distribution strategy is consistent with the identified target market.

(2) Distributors must appropriately identify and assess the circumstances and needs of the clients they intend to focus on to ensure that their...
clients’ interests are not compromised as a result of commercial or funding pressures.

(3) Distributors must identify any groups of end clients for whose needs, characteristics and objectives the financial instrument or investment service is not compatible.

[Note: article 10(2) of the MiFID Delegated Directive]

3.3.16 R Distributors must periodically review their product governance arrangements under ■ PROD 3.3.15R and must take appropriate actions where necessary to ensure they remain robust and fit for their purpose.

[Note: article 16(3) of MiFID and article 10(4) of the MiFID Delegated Directive]

3.3.17 G In the design of investment services, to help clients make an informed investment decision, firms should consider the support clients need before they reach the product selection part of the process.

3.3.18 R Distributors must have in place procedures and measures to ensure that when deciding the range of financial instruments and investment services to be distributed, and the target market, all applicable rules are complied with, including but not limited to:

1. disclosure (see ■ COBS 4 and ■ COBS 14.3A);
2. suitability (see ■ COBS 9A);
3. appropriateness (see ■ COBS 10A);
4. inducements (see ■ COBS 2.3A); and
5. conflicts of interest (see ■ SYSC 10.1).

3.3.19 G Distributors should take particular care to ensure compliance with ■ PROD 3.3.18R when they intend to distribute new financial instruments or there are variations to the investment services they provide.

[Note: article 10(3) of the MiFID Delegated Directive]

Oversight and training requirements

3.3.20 R The development and periodic review of product governance arrangements must be monitored by the person allocated the compliance oversight function of a firm in order to detect any risk of failure by the distributor to comply with applicable provisions of PROD.

[Note: article 10(6) of the MiFID Delegated Directive]

3.3.21 R The management body of a distributor must have effective control over the firm’s product governance process to determine:
(1) the range of financial instruments the firm offers or recommends; and

(2) the investment services provided to the respective target markets.

[Note: article 10(8) of the MiFID Delegated Directive]

3.3.22 R

All relevant staff must possess the necessary expertise to understand:

(1) the characteristics and risks of the financial instruments that the firm intends to distribute;

(2) the investment services provided by the firm; and

(3) the needs, characteristics and objectives of the identified target market.

[Note: article 10(7) of the MiFID Delegated Directive]

3.3.23 G

Firms should have regard to SYSC 5.1, and in particular SYSC 5.1.5AB R, when considering whether their relevant staff have the necessary expertise.

Compliance reports

3.3.24 R

Compliance reports to the management body must include information about the financial instruments distributed by the firm and the investment services provided.

3.3.25 R

A distributor shall make the compliance reports available to competent authorities on request.

[Note: article 10(8) of the MiFID Delegated Directive]

Post-sale review

3.3.26 R

Distributors must regularly review the financial instruments they distribute and the investment services they provide, taking into account any event that could materially affect the potential risk to the identified target market.

3.3.27 R

In carrying out the review in PROD 3.3.26R, distributors must assess at least:

(1) whether the financial instrument or investment service remains consistent with the needs, characteristics and objectives of the identified target market; and

(2) whether the intended distribution strategy remains appropriate.

3.3.28 R

If a distributor becomes aware that it has wrongly identified the target market for a specific financial instrument or investment service, or the financial instrument or investment service no longer meets the circumstances of the identified target market, it must take appropriate steps, including at least:
(1) reconsidering the target market; and/or

(2) updating its product governance arrangements.

3.3.29 A distributor may need to take action under PROD 3.3.28R in circumstances where the financial instrument becomes very illiquid or very volatile due to market changes.

[Note: article 16(3) of MiFID and article 10(5) of the MiFID Delegated Directive]

Information sharing

3.3.30 To support the reviews carried out by manufacturers under PROD 3.2.19R to PROD 3.2.26R, a distributor must provide to the manufacturer of each financial instrument it distributes:

(1) information on sales; and

(2) where appropriate, information on the reviews carried out under PROD 3.3.26R to PROD 3.3.28R.

3.3.31 (1) Information on sales should include information on any sales made outside the target market.

(2) In complying with PROD 3.3.30R it is not necessary to report every sale to the manufacturer. Distributors should provide the data necessary for the manufacturer to review the financial instrument and check that it remains consistent with the needs, characteristics and objectives of the target market defined by the manufacturer. Relevant information could include:

(a) summary information of the types of clients;
(b) a summary of complaints received; and
(c) responses from clients to questions suggested by the manufacturer for the purposes of obtaining feedback from a client sample.

(3) In determining when providing information on the reviews carried out under PROD 3.3.26R to PROD 3.3.28R is appropriate, a distributor should have regard to the requirements on the manufacturer in PROD 3.2. Information on the reviews should be shared if the manufacturer requests it.

[Note: article 10(9) of and recital 20 to the MiFID Delegated Directive]

Responsibilities in chains of distributors

3.3.32 (1) A firm which distributes financial instruments or investment services to end clients is responsible for ensuring that the obligations in this chapter are met in respect of any financial instrument or investment service it distributes to an end client.

(2) A firm which distributes financial instruments to clients which are not end clients must, in addition to complying with the rules in this
chapter, consider if they are also undertaking a *manufacturing* role and, if they are, also apply ■ PROD 3.2.

### 3.3.33 R

A distributor which *distributes financial instruments* to other distributors must:

1. ensure that relevant product information is passed from the *manufacturer* to the final *distributor* in the chain; and

2. if the *manufacturer* requires information on product sales in order to comply with its obligations under ■ PROD 3.2, enable them to obtain it.

[Note: article 10(10) of the *MiFID Delegated Directive*]