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Panel response to the EBA consultation on guidelines for product oversight and governance arrangements (POG) in retail banking

Question 1: Do you agree with the proposed approach of capturing the entire product life cycle by covering distributors as well as manufacturers?

Yes, we agree with the proposed approach.

The Panel would also strongly support an approach which enables national competent authorities to include smaller- and medium-sized businesses (SMEs) within their definition of a 'consumer' for the purposes of applying these guidelines. Given that many SMEs are effectively retail consumers, we do not believe that there would be any significant additional administrative costs associated with this approach.

Question 2: Do you agree with the delineation of the two sets of requirements for manufacturers and distributors?

Yes. It seems sensible to apply requirements to the two that are tailored to their specific characteristics. However, it is important that the final guidelines do not create any confusion over where responsibility lies, or create any gaps. In this respect, the guidelines should make clear that, in case of ambiguity, the manufacturer retains ultimate responsibility for product governance and oversight.

Question 3: Are there any additional requirements that you would suggest adding to either of the two sets of requirements? If so, why?

No comment

Guidelines for manufacturers of retail banking products

Question 4: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

The Panel would ask the EBA to consider whether companies should be urged by means of these guidelines to make their POG arrangements public to allow for greater scrutiny. Such a level of transparency is more likely to elevate any policies put in place beyond a simple box-ticking exercise.

We are also concerned that EBA appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. Were POG arrangements to be reviewed independently, it is more likely that the review is sufficiently critical and shortcomings are flagged up promptly. In particular in firms where repeated breaches of product oversight and governance procedures occur, independent review should be encouraged. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.

Question 5: Do you agree with Guideline 2 on manufacturers' internal control functions?

We are concerned that EBA appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. Were POG arrangements to be reviewed independently, it is more likely that the review is sufficiently critical and shortcomings are flagged up promptly. In particular in firms where repeated breaches of product oversight and governance procedures occur, independent review should be encouraged. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.

Question 6: Do you agree with Guideline 3 on the target market?

The guidelines do not refer to simple products, even though adequate product oversight and governance arrangements are a key component in ensuring that products and their risks can be readily understood by consumers.

We would like to reiterate the findings of the 2013 Sergeant Review in the UK¹, which found that many consumers need simple financial products because of "the challenge of making good choices in what seems to many to be an overwhelmingly complicated marketplace with a very wide range of products which are complex and difficult to understand".

The review also established a set of principles, which form the basis of an objective test to establish whether a product is simple or not. These include for example the use of standardised language, a transparent fee structure and straightforward and clear purchasing process.

We would encourage the EBA, in cooperation with the other ESAs, to conduct a similar exercise at EU-level to establish such operating principles for manufacturers. To ensure adequate consumer understanding of the types of products they are offered, it is also critical that a designation of a product as 'simple' is subject to oversight by a regulator or another independent body.

Although these guidelines are non-binding, we believe it would be helpful to include that manufacturers should in particular consider the design and marketing of simple products that can be readily understood by all consumers.

Question 7: Do you agree with Guideline 4 on product testing?

No comment

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191721/sergeant_review_simple_products_final_report.pdf

Question 8: Do you agree with Guideline 5 on product monitoring?

No comment

Question 9: Do you agree with Guideline 6 on remedial action?

We would ask the EBA to include a clear reference in guideline 6 to the possibility of suspending from sale a product where monitoring has found problems with the design or sale of a specific product. The Panel also believes that any remedial action should be promptly reported to the competent authorities of the home Member State, so that the authorities can spot emerging problems and risks more rapidly.

Although we accept that this is outside of the scope of this consultation paper, the Panel would like to underline to EBA and other EU institutions the need to investigate the desirability of introducing, in the long-run, a regulatory pre-approval process for certain products. This would be particularly relevant for products which have been identified as prone to the need for remedial action following the application of the product oversight procedures.

Question 10: Do you agree with Guideline 7 on the selection of distribution channels?

No comment

Question 11: Do you agree with Guideline 8 on information for distributors?

No comment

Guidelines for distributors of retail banking products

Question 12: Do you agree with Guideline 1 on establishment, proportionality, review and documentation?

The Panel would ask the EBA to consider whether companies should be urged by means of these guidelines to make their POG arrangements public to allow for greater scrutiny. Such a level of transparency is more likely to elevate any policies put in place beyond a simple box-ticking exercise.

We are also concerned that EBA appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. Were POG arrangements to be reviewed independently, it is more likely that the review is sufficiently critical and shortcomings are flagged up promptly. In particular in firms where repeated breaches of product oversight and governance procedures occur, independent review should be encouraged. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.

Question 13: Do you agree with Guideline 2 on the distributor's internal control functions?

We are concerned that EBA appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. Were POG arrangements to be reviewed independently, it is more likely that the review is sufficiently critical and shortcomings are flagged up promptly. In particular in firms where repeated breaches of product oversight and governance procedures occur, independent review should be encouraged. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.

Question 14: Do you agree with Guideline 3 on the knowledge of the target market?

The guidelines should make an explicit reference to staff involved in the sale of the product, as this is arguably where the greatest risk of miss-selling occurs. Such staff should receive adequate training to identify the target market for a specific product. The EBA could envisage a provision that staff should be properly trained and not be incentivised to act against the customer's best interest, for example through inappropriate remuneration structures.

The Panel also believes it would be beneficial to all parties were the distributor to inform the manufacturer's Home State regulator should they become aware of any event that could materially affect the potential risk to the identified target market.

If it appears that the product is being sold outside the original target market, distributors should make this information available to the manufacturer and both should consider whether sales of the product should be suspended, or whether it may have been mis-sold. They should also be required to inform the Home State regulator.

Question 15: Do you agree with Guideline 4 on information?

No comment