

Guidelines

Guidelines on cross-selling practices

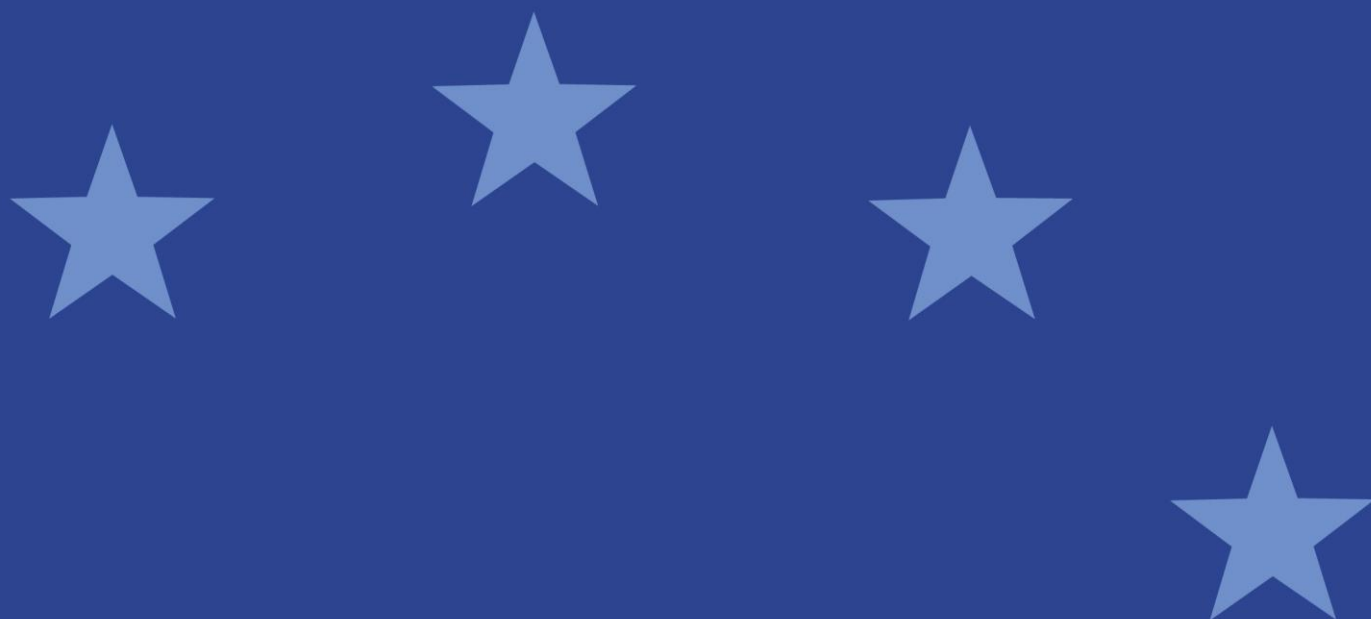


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1 Purpose

1. The primary purpose of these guidelines is to establish a coherent and effective approach in the supervision of firms by competent authorities which will contribute to the enhancement of investor protection across Member States. The guidelines will therefore help to clarify the expected standard of conduct and organisational arrangements for those firms engaged in cross-selling practices in order to mitigate any associated investor detriment.

2 Scope

2. The guidelines apply in relation to cross-selling practices within the meaning of subparagraph 42 of Article 4(1) of MiFID II. In particular, the guidelines apply to the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.
3. In light of the above definition, ESMA would like to recall that other conduct of business standards (as laid down in sectorial EU legislation other than MiFID II) may apply to each of the products or services which are cross-sold by a firm or to the package resulting from cross-selling practices. Nothing in these guidelines affects firms' obligations to comply with such applicable requirements.
4. The guidelines apply to tying and bundled packages unless they are prohibited under any legislation applicable to the products or the services which are included in the package.

3 Addressees

5. The guidelines are addressed to competent authorities with supervisory oversight of firms subject to the following directives:
 - a. Markets in Financial Instruments Directive (recast) (Directive 2014/65/EU - MiFID II);
 - b. Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Directive 2009/65/EC - UCITS Directive);
 - c. Alternative Investment Fund Manager Directive (Directive 2011/61/EU - AIFMD).

4 Compliance, reporting obligations and date of application

Status of the guidelines

6. These guidelines are issued under Article 16 of the ESMA's Regulation. In accordance with subparagraph (3) of that Article, competent authorities shall make every effort to comply with the guidelines. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. through an amendment of their regulatory framework or their supervisory processes).
7. In accordance with Article 24(11) of MiFID II, ESMA has cooperated with EBA and EIOPA when developing these guidelines.
8. These guidelines apply from 3 January 2017.

Reporting requirements

9. Competent authorities to whom these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication of the translated versions by ESMA to cross-selling1861@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available on ESMA website.
10. Where useful to do so, the guidelines contained in the paragraphs below are followed by one or more examples. The examples indicate further how each guideline (implemented by competent authorities) might be followed by firms in practice. However, there could be other ways in which a firm could choose to put these guidelines into practice.

5 Definitions

11. Unless otherwise specified, terms used in MiFID II have the same meaning in these guidelines. In addition, for the purpose of these guidelines, the following definitions apply:

<i>Firms</i>	<p>The following financial market participants:</p> <ul style="list-style-type: none"> a) investment firms (as defined in Article 4(1)(1) of MiFID II); b) credit institutions (as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013) when providing investment services and activities within the meaning of subparagraph 2 of Article 4(1) of MiFID II; c) management companies (as defined in Article 2(1)(b) of Directive 2009/65/EC) when providing services pursuant to Article 6(3) of Directive 2009/65/EC; and d) external AIFMs (as defined in Article 5(1)(a) of Directive 2011/61/EU) when providing services pursuant to Article 6(4) of Directive 2011/61/EU.
<i>Bundled package</i>	A package of products and/or services where each of the products or services offered is available separately and where the client retains the choice to purchase each component of the package separately from the firm.
<i>Tied package</i>	A package of products and/or services where at least one of the products or services offered in the package is not available separately to the customer from the firm.
<i>Component product</i>	The separate product and/or service which constitute part of the bundled or tied package.

6 Guidelines on cross-selling practices

Full disclosure of price and cost information

Guideline 1

12. Competent authorities supervising firms which distribute a tied or a bundled package should require firms to ensure that clients are provided with information on the price of both the package and of its component products.
13. Competent authorities supervising firms that distribute a tied or a bundled package should require firms to ensure that clients are provided with a clear breakdown and aggregation of all relevant known costs associated with the purchase of the package and its component products - such as administration fees, transaction costs, and exit or pre-payment penalty charges. Where costs cannot be calculated with precision on an ex ante basis but nevertheless will be incurred by clients after the purchase of the package, the competent authority should require the firm to provide an estimation of these costs based on reasonable assumptions.

Illustrative example

When cross-selling an interest rate swap with a variable rate loan to allow a client to hedge interest rate risk (i.e. the client swaps his/her floating rate payment for a fixed interest rate payment) the firm provides key information to the client on all aspects of the swap agreement which will materially affect the cost the client finally incurs such as the client's potential payment liability when interest rates change and the exit charges from the swap contract.

Prominent display and timely communication of price and cost information

Guideline 2

14. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that information on price and all relevant costs of the package and on each of its component products, is made available in good time before the client is bound to the agreement, allowing the client to make an informed decision.

Guideline 3

15. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that price and cost information of the package and its component products is communicated to clients in a prominent, accurate manner and in simple language (with any technical terminology explained).
16. Competent authorities supervising firms which distribute a tied or bundled package should require firms to ensure that when promoting any of the component products that will form a bundled or tied package, firms ensure that equal prominence is assigned to

the price and cost information of these component products so that a client can properly and quickly discern the cost impact upon them as a result of purchasing both as a package.

Illustrative examples

- 1) *In any marketing communications used by the firm, the font used to communicate the relevant price and cost information of each of the component products intended to be sold as a package is the same. Relevant information concerning one of the component products is not given more emphasis with the use of a bigger or bolder font.*
- 2) *Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both products that will form the package appears early-on in the relevant webpages and is easily navigated by clients i.e. the price and cost information of any product which will form part of the bundled package is not placed or 'hidden' further down in the firm's on-line sales form.*

Guideline 4

17. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that the price and cost information is presented to clients in a way which is not misleading or which distorts or obscures the real cost to the client or prevents meaningful comparison with alternative products.

Full disclosure of key information on non-price features and risks, where relevant

Guideline 5

18. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that clients are provided with key information relating to the non-price features and risks - where applicable - of each of the component products and the package, including in particular the information on how the risks are modified as a result of purchasing the bundled package rather than each of the components separately.

Illustrative example

A firm offers a preferential rate savings account only when purchased with a structured bond. In this case, the level of risk posed by this total package is different from the risks posed by the savings account alone: the initial capital in a savings account is guaranteed, and the only variable is the interest paid. But initial capital invested in a structured investment product may not be guaranteed, and so it could be lost in part or altogether. In such example, the risk profiles of the components are clearly very different and, when combined, the level of risk associated with the structured product component could negate the safety of the savings product component to the extent that the overall risk profile of the package is significantly increased. The firm clearly informs the client about

how the risk is modified as a result of purchasing the bundled package rather than each of the components separately.

Prominent display and timely communication of key information on non-price features and risks, where relevant

Guideline 6

19. Competent authorities supervising firms which distribute the tied or bundled package should require firms to ensure that key non-price factors and the relevant risks are promoted to clients with the same prominence and weight as information on price and cost of the component products or bundled/tied package and these should be made clear to clients in simple language (with any technical terminology explained) in good time before the client is bound to the agreement.
20. Competent authorities supervising firms which distribute the tied or bundled package should also require firms to ensure that information on the non-price features and risks of the package is presented to clients in a way which is not misleading or which distorts the impact of these factors for the client.

Illustrative examples

- 1) *The firm draws to the client's attention the limitations and risks (if relevant) of the tied or bundled package and the component products and guides the client through the relevant information which sets out the key benefits, limitations and risks (if relevant) of the package and the component products. The sales person explains carefully and in due time (i.e. before the client is bound to the agreement) how these non-price factors materially change according to (i) whether the component product is purchased and (ii) which component is selected. The firm alerts the client of the tied package to the overall benefits, limitations and risks (if relevant) of the package.*
- 2) *The firm refrains from exclusively relying on a general reference to their Terms & Conditions to alert or disclose to key non-price information to clients. Instead, the firm explains the risks (if relevant) and non-price information to the client in plain language.*

Prominent display and communication of 'optionality of purchase'

Guideline 7

21. Competent authorities supervising firms which distribute bundled or tied packages should require firms to ensure that clients are properly informed whether it is possible to purchase the component products separately – i.e. whether clients have a choice as to which of the products they buy or, to the extent that this is permitted under sectorial legislation, whether one of the component products has to be purchased in order for the client to be eligible to buy one of the other products from the firm.

22. Competent authorities supervising firms which distribute a bundled package should require firms to ensure that they design their purchase options in a way which enables clients to actively select a purchase and therefore to make a conscious decision to buy the component product or the bundled package. Competent authorities should therefore require firms to ensure that pre-ticked boxes (on-line or in any other sales document) are not used by firms when they cross-sell one product or service with another.
23. Competent authorities supervising firms which distribute a bundled package should require firms to ensure that they present their purchase options in a way which avoids giving a false perception that the purchase of the bundled package is compulsory when in fact it is an optional purchase.

Illustrative examples

- 1) *A firm offers a range of different investment products). The firm sets out the client's options clearly. For example, it is clear that the client has the option to purchase an execution only service with no additional products such as market data and financial analysis. Similarly, it is clear whether the client's choice is restricted to particular bundles of component products, or if he/she has a free choice as to which ones they can combine together.*
- 2) *The purchase option for a bundled package of execution only service and markets research on the firm's sales internet pages is left blank. The client has to opt-in to the purchase by clicking 'yes' to a simple question about whether the client wants to buy the add-on product (in this case the market research) (and therefore bundled package) in addition to the 'core' product.*

Adequate training for relevant staff

Guideline 8

24. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that adequate training, including cross-sectorial training when relevant, is provided to staff in charge of distributing each of the products sold as part of a package. Staff training should ensure that staff are familiar with the risks, where relevant, of the component products and the bundled or tied package and be able to communicate these to clients in plain (non-technical) language.

Conflicts of interest in the remuneration structures of sales staff

Guideline 9

25. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of clients and avoidance of conflicts of interest for staff selling the tied or bundled package are in place and are monitored by senior management.

Illustrative examples

- 1) *The firm refrains from operating remuneration policies, practices and performance-based competitions that encourage sales staff who may be remunerated on a commission basis to 'push', the sale of the bundled package and which may therefore encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance if sales staff were incentivised to cross-sell a loan with a brokerage account, then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the loan and therefore also of the package.*
- 2) *The firm avoids remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the bundled/tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the bundled package to avoid this outcome.*
- 3) *The firm avoids reducing bonus or incentive payments earned by sales staff because a sales target or threshold for the bundled package has not been met.*

Post-sale cancellation rights

Guideline 10

26. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a package (if the components were sold on a stand-alone basis), these rights should continue to apply to those components within the package.
27. Competent authorities supervising firms which distribute tied or bundled packages should require firms to ensure that, clients are subsequently allowed to split the products grouped in a cross-selling offer without disproportionate penalties – unless there are justified reasons why this is not possible.

7 Examples of detrimental cross-selling practices

28. The examples below provide, in accordance with Article 24(11) of MiFID II, a non-exhaustive list of situations in which cross-selling practices are not compliant with the obligations laid down in Article 24(1) of MiFID II.

Examples with a monetary detriment

Example 1

Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same firm (as long as products have the exact same features in both cases).

Example 2

Inducing a client to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the client is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees.

Example 3

Not returning a portion of the proportional part of the pre-paid premium of an insurance component of the package further to the termination of an investment service that was sold together with it when the insurance product does not remain in force.

Example with reduced mobility detriment

Example 4

Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider or threatening with the termination of the contractual relationship regarding another product included in the package.

Example of purchase of unwanted or unnecessary products

Example 5

Offering a product bundled with another product that has not been requested by the client when the firm is aware or should be aware that the product unnecessarily duplicates another product that the client already has and cannot benefit from (including because the customer is not eligible).