

POSTED ONLINE

DECISION
3/960/4.8.2022
of the Board of Directors

Subject: Amendment of Decision No. 1/808/07.02.2018 of the Board of Directors of the Hellenic Capital Market Commission "Organizational requirements regarding the safeguarding of client financial instruments and funds, product governance and the provision or reception of fees, commissions or other monetary or non-monetary benefits" (Government Gazette B/812/07.03.2018).

**THE BOARD OF DIRECTORS
OF THE HELLENIC CAPITAL MARKET COMMISSION**

Having considered:

1. Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 'amending Delegated Directive (EU) 2017/593, as regards the integration of sustainability factors into the product governance obligations' (L 277/137).
2. Article 90 of Presidential Decree 63/2005 "Codification of legislation on Government and Government Bodies" (Government Gazette A/98/2005).
3. Paragraph 2 of Article 13 of Law 2166/1993 (Government Gazette A' 137), as amended by par. 3 of article 18 of Law 2198/1994 (Government Gazette A' 43) and was replaced by par. 6 of article 39 of Law 2324/1995 (Government Gazette A' 146).
4. The Decision no. 1/808/07.02.2018 of the Board of Directors of the Hellenic Capital Market Commission "Organisational requirements regarding the safeguarding of client financial instruments and funds, product governance and the provision or reception of fees, commissions or other monetary or non-monetary benefits" (Government Gazette B/812/07.03.2018).
5. No expenditure shall be charged to the national budget under the provisions of this Decision.

UNANIMOUSLY DECIDES

Article 1

Article 1 of Decision No. 1/808/07.02.2018 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Purpose and scope of
application (Article 1
of Delegated Directive 2017/593/EU)

1. The purpose of this Decision is to incorporate Commission Delegated Directive (EU) 2017/593 of 7 April 2016 "supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to the safeguarding of financial instruments and funds belonging

to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits."

2. This decision applies to: a) the Investment Services Sociétés Anonymes (AEPEY) of Law 4514/2018, b) the Mutual Fund Management Companies (MFMC) that have been authorised to provide the services of article 12 par. 2 of Law 4099/2012, c) Alternative Investment Fund Managers Sociétés Anonymes (AIFM SA), which have been authorised to provide the services of article 6 par. 4 of Law 4209/2013 d) to Investment Intermediation Firms (AEED) of Law 4514/2018, and e) to branches of third country companies, which are authorized in accordance with article 41 par. 2 of Law 4514/2018. Articles 11 to 13 shall also apply to credit institutions of Law 4261/2014, which provide investment services, to management companies that have been authorized to provide the services of Article 6 par. 4 of Directive 2009/65/EU, to Alternative Investment Fund Managers (AIFM), who have been authorized to provide the services of article 6 par. 6 of Directive 2011/61/EU, which provide investment services in Greece through a branch, as well as to investment firms of another Member State, which provide services through a branch or a tied agent, in accordance with section B of Article 35 of Law 4514/2018.

3. For the purposes of Chapter IV of this Decision, references to AEPEY and financial instruments include both credit institutions and structured deposits in relation to all requirements referred to in Article 1 (3) and (4) of Law 4514/2018.

4. For the purposes of this Decision:

1. 'Securities financing transaction': transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse.

2. 'Qualifying money market fund' means a collective investment undertaking authorized under Law 4099/2012 or Directive 2009/65/EC, or subject to supervision and, where applicable, authorized by a competent authority under the national law of a Member State, that meets the following criteria:

(a) its primary investment objective is to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

(b) to achieve the primary investment objective, invests exclusively in high quality money market instruments with a maturity or residual maturity of not more than 397 days, or with regular yield adjustments consistent with that maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(c) provide liquidity through same day or next day settlement.

For the purposes of point (b), a money market instrument shall be considered to be of high quality if the AEPEY carries out its own documented assessment of the credit quality of the money market instruments which enables it to consider it to be of high quality. Where one or

more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the internal assessment of the AEPEY shall have regard to, inter alia, those credit ratings.

5. “sustainability factors”: sustainability factors as defined in Article 2 (24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

Article 2

Article 9 of Decision No. 1/808/07.02.2018 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

"Product governance obligations
for AEPEY
who manufacture financial instruments (Article 9
of Delegated Directive 2017/593/EU)

1. The provisions of this Article shall apply to the AEPEY when manufacturing financial instruments including the creation, development, issuance and/or design of financial instruments.

AEPEY manufacturing financial instruments shall comply in a manner that is appropriate and proportionate with the relevant requirements of paragraphs 2 to 15, taking into account the nature of the financial instrument, the investment service and the target market for the product.

2. AIFMs shall establish, implement and maintain procedures and measures to ensure that the manufacturing of financial instruments complies with the requirements for the proper management of conflicts of interest, including remuneration. In particular, AIFM manufacturing financial instruments shall ensure that the design of the financial instrument, including its features, does not adversely affect end clients and does not lead to market integrity problems by allowing the firm to mitigate and/or transfer the same risks or exposures to the underlying assets of the product when the AEPEY already owns the underlying assets for its own account.

3. AEPEY analyse potential conflicts of interest each time a financial instrument is manufactured. In particular, firms shall assess whether the financial instrument creates a situation in which end clients may be adversely affected if they receive:

- (a) an exposure opposite to that previously held by the firm itself; or
- (b) an exposure opposite to the one that the firm wants to hold after the sale of the product.

4. AEPEY shall consider whether the financial instrument may represent a threat to the orderly functioning or stability of financial markets before deciding to market the product.

5. AEPEY shall ensure that relevant staff involved in the construction of financial instruments have the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

6. The AEPEY shall ensure that the management body has effective control over the governance process the firm's product. AEPEY shall ensure that the management body's compliance reports systematically include information on the financial instruments manufactured by the firm, including information on the distribution strategy. AEPEY shall make the reports available to the Capital Market Commission upon request.

7. AEPEY shall ensure that the regulatory compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of non-compliance by the firm with the obligations set out in this Article.

8. When AEPEY cooperate, including with entities that are not authorized and supervised in accordance with Law 4514/2018 or Directive 2014/65/EU or with third country firms in order to create, develop, issue and/or design a product, they shall specify their mutual responsibilities in a written agreement.

9. The AEPEY shall specify at a sufficiently detailed level the potential target market for each financial instrument and shall specify the type(s) of clients with which the needs, characteristics and objectives, including any sustainability objectives, of the financial instrument are compatible. As part of this process, the AEPEY shall identify any client group or groups with the needs, characteristics and objectives of which the financial instrument is not compatible, unless the financial instruments take into account sustainability factors. Where investment firms cooperate in the construction of a financial instrument, only one target market should be identified.

AEPEY manufacturing financial instruments distributed through other AEPEY shall define the needs and characteristics of the clients with whom the product is compatible, based on their theoretical knowledge and experience in relation to the financial instrument or similar financial instruments, financial markets and the needs, characteristics and objectives of potential end clients.

10. AEPEY shall carry out a scenario analysis of their financial instruments, assessing the risks of low outcomes for end clients from the product and in which cases these outcomes may occur. AEPEY shall assess the financial instrument under negative conditions, covering what would happen if, for example:

(a) the market environment was deteriorating;

(b) the manufacturer or third party involved in the construction and/or operation of the financial instrument is in financial difficulties or if any other counterparty risk arises;

(c) the financial instrument does not become commercially viable; or

(d) demand for the financial instrument is much higher than expected, burdening the company's resources and/or the market of the underlying instrument.

11. The AEPEY shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by considering the following elements:

(a) the risk/reward profile of the financial instrument is in line with the target market;

(b) the sustainability factors of the financial instrument, where applicable, are consistent with the target market; and

(c) the design of the financial instrument is based on characteristics that benefit the client and not on a business model that relies on the client's inefficient results to be profitable.

12. The AEPEY shall take into account the charging structure proposed for the financial instrument, including consideration of the following:

(a) the costs and charges of the financial instrument are compatible with the needs, objectives and characteristics of the target market;

(b) charges do not undermine the estimated returns of the financial instrument, such as when costs or charges are equal, exceed or eliminate almost all the estimated tax advantages associated with a financial instrument; and

(c) the charging structure of the financial instrument is appropriately transparent for the target market so that it does not conceal charges or is not too complex to understand.

13. AEPEY shall ensure that the provision of information to distributors on a financial instrument includes information on the appropriate channels for the distribution of the financial instrument, the product approval process and the assessment of the target market and is sufficient to enable distributors to understand and propose or dispose of the financial instrument correctly.

The sustainability factors of the financial instrument shall be presented in a transparent manner and shall provide distributors with relevant information to take due account of any sustainability objectives of the client or potential client.

14. AEPEY shall regularly review the financial instruments they manufacture, taking into account any event that could materially affect the potential risk to the identified target market. AEPEY shall consider whether the financial instrument remains consistent with the needs, characteristics and objectives, including any sustainability objectives, of the target market and whether it is distributed to the target market or reaches clients whose needs, characteristics and objectives the financial instrument is not compatible with.

15. AEPEY shall review financial instruments prior to any further issue or disposal if they become aware of any event that could materially affect the potential risk to investors and shall periodically assess whether the financial instruments are functioning as intended. IRRs shall determine the periodicity of review of their financial instruments on the basis of relevant factors including those related to the complexity or novelty of the investment strategies pursued. The AEPEY shall also identify the critical events that could

affect the potential risk or estimated returns of the financial instrument, such as:

- (a) exceeding a threshold that will affect the performance profile of the financial instrument; or
- (b) the solvency of certain issuers whose securities or guarantees may affect the performance of the financial instrument.

AEPEY shall ensure that, when such events occur, they take appropriate measures which may include:

- (a) the provision of any relevant information on the event and its consequences in the financial instrument to the clients or distributors of the financial instrument, if the AEPEY does not offer or dispose of the financial instrument directly to the clients;
- (b) changing the product authorization procedure;
- (c) the discontinuation of further issuance of the financial instrument;
- (d) changing the financial instrument to avoid unfair contract terms;
- (e) the examination of whether the sales channels through which financial instruments are sold are appropriate when firms become aware that the financial instrument is not sold as intended;
- (f) communication with the distributor to discuss a modification of the distribution process;
- (g) the termination of the relationship with the distributor; or
- (h) informing the Securities and Hellenic Capital Market Commission.';

Article 3

Article 10 of Decision No. 1/808/07.02.2018 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

“Product governance obligations
for distributors (Article 10
of Delegated Directive 2017/593/EU)

1. Where they decide on the range of financial instruments issued by the same or other firms and the services they intend to offer or offer to clients, they shall comply, in a manner that is appropriate and proportionate, with the relevant requirements set out in paragraphs 2 to 10, taking into account the nature of the financial instrument, the investment service and the target market for the product. AEEY comply with the requirements of Law 4514/2018 when offering or recommending financial instruments manufactured by entities not subject to Law 4514/2018 or Directive 2014/65/EU. As part of this process, such AEPEY shall have in place effective arrangements to ensure that they obtain sufficient information on these

financial instruments from their manufacturers. AEPEY shall determine the target market for the respective financial instrument, even if the target market has not been defined by its manufacturer.

2. AEPEY shall have in place adequate product governance arrangements to ensure that the products and services it intends to offer or recommend are compatible with the needs, characteristics and objectives, including any sustainability objectives, of an identified target market and that the planned distribution strategy is compatible with the identified target market. AEPEY shall appropriately identify and assess the circumstances and needs of the clients on which they intend to focus in order to ensure that the interests of the clients are not compromised as a result of commercial or financing pressures. As part of this process, the AEPEY shall identify any client group or groups with the needs, characteristics and objectives of which the financial instrument is not compatible, unless the financial instruments take into account sustainability factors.

AEPEY shall obtain from manufacturers subject to Law 4514/2018 or Directive 2014/65/EU information in order to gain the necessary understanding and knowledge of the products they intend to recommend or make available, in order to ensure that those products will be distributed in accordance with the needs, characteristics and purposes of the identified target market.

AEPEY shall take all reasonable steps to ensure that they also obtain sufficient and reliable information from manufacturers not subject to Law 4514/2018 or Directive 2014/65/ EU to ensure that products are distributed in accordance with the characteristics, purposes and needs of the target market. Where the relevant information is not publicly available, the distributor shall take all reasonable steps to obtain the relevant information from the manufacturer or his representative. Acceptable publicly available information is information that is clear and reliable and produced in compliance with regulatory requirements, such as disclosure requirements under Directive 2003/71/EC or 2004/109/EC of the European Parliament and of the Council. This obligation applies to products placed on the primary and secondary market and applies in a proportionate manner, depending on the extent to which publicly available information can be obtained and on the complexity of the product.

AEPEY use the information received from manufacturers and information about their own clients to determine the target market and distribution strategy. When an AEPEY acts both as a manufacturer and a distributor, only one assessment of the target market is required.

3. When deciding on the range of financial instruments and services they offer or recommend and the respective target markets, AEPEY shall implement procedures and measures to ensure compliance with all applicable requirements in accordance with Law 4514/2018, including those relating to disclosure, assessment of suitability or compatibility, inducements and the proper management of conflicts of interest. In this context, they shall pay particular attention when distributors intend to offer or recommend new products or there are variations in the services they provide.

4. AEPEY shall periodically review and update the product governance arrangements to ensure that they remain robust and fit for purpose, and take appropriate action when necessary.

5. AEPEY shall review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. The AEPEY shall assess at least whether the product or service continues to serve the needs, characteristics and objectives, including any sustainability objectives, of the identified target market and whether the planned distribution strategy is still appropriate. AEPEY shall review the target market and/or update the product governance arrangements if they become aware that they have incorrectly identified the target market for a particular product or service or that the product or service no longer meets the conditions of the identified target market, such as when the product becomes illiquid or very volatile due to market changes.

6. AEPEY shall ensure that the regulatory compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of non-compliance by the firm with the obligations set out in this Article.

7. AEPEY shall ensure that relevant staff have the necessary experience to understand the characteristics and risks of the products they intend to offer or recommend and the services they provide, as well as the needs, characteristics and purposes of the identified target market.

8. AEPEY shall ensure that the management body has effective control over the firm's product governance process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. AEPEY shall ensure that compliance reports to the management body systematically include information on the products they offer or recommend and the services they provide. Compliance reports shall be made available to the Hellenic Capital Market Commission on request.

9. Distributors shall provide manufacturers with information on sales and, where appropriate, information on the above assessments to support the product review carried out by manufacturers.

10. Where different firms cooperate in the distribution of a product or service, the AEPEY with the direct client relationship will have the ultimate responsibility for fulfilling the product governance obligations set out in this Article. However, the AEPEY, which mediate:

(a) ensure that relevant product information reaches the final distributor in the chain from the manufacturer;

(b) if the manufacturer requires information on sales of the products in order to comply with his own product governance obligations, they enable him to obtain it; and

(c) apply product governance obligations on manufacturers, to the extent necessary, in relation to the service they provide."

Article 4
Entry into force

This Decision shall apply from the date of its adoption. It shall apply from 22 November 2022. This decision shall be published in the Government Gazette (Issue B').

The Secretary

Melina Stavropoulou

The President

The A Vice-President

The B Vice-President

Vasiliki Lazarakou

Nikolaos Kontaroudis

Anastasia Stamou

The members

Anastasios Virvilios

Georgios Leledakis

Georgios Paschas