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Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Best Execution

Subject Matter
Best Execution

Question
What constitutes ‘other liquidity provider’ under Recital 7 of RTS 27?

ESMA Answer

25-05-2018

Original language

[ESMA35-43-439 MiFID II Investor protection best execution Q&A 18]

Recital 7 of RTS 27 sets out a broad definition for ‘other liquidity provider’. It says: “other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis”.

The definition under Recital 7 indicates that other liquidity providers include firms that act similarly to market makers whereby they deal on own account and provide liquidity to other market participants on an on-going basis, however do not necessarily have formal agreements in place for this activity. Accordingly, a liquidity provider may not commit to providing prices in an instrument under all market conditions.

The definition gives flexibility for ESMA and national competent authorities to determine when a firm is considered to provide liquidity as part of their normal business activity. In general, ESMA considers that a firm that regularly and consistently provides liquidity in an instrument would meet the definition of “other liquidity provider” under RTS 27. Accordingly, liquidity provision will be central to the firm’s business model or trading activity.

For instance, ESMA considers that a CFD provider that deals on own account, and regularly quotes two-way pricing for an instrument would meet the definition of “other liquidity provider” under RTS 27. However, as set out previously, there is no expectation that a firm will need to be continuously willing to enter into transactions to buy and sell financial instruments at all times to be considered a liquidity provider.

ESMA would also like to point out that the definition of other liquidity provider can include both firms who provide liquidity on venue and over the counter. In addition, a firm will be classified as a liquidity provider on the basis of all their trades rather than on a trade by trade

basis.

It is also worth noting that, as stated in Recital 6, other liquidity providers are only required to include in their RTS 27 reports data on orders executed or the price quoted for their clients in instruments not subject to the trading obligation.