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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
Information to clients on topics other than costs and charges

Subject Matter
MiFID practices for firms selling financial instruments subject to the BRRD resolution regime

Question
Should all sales of subordinated eligible liabilities to retail clients be subject to a suitability test or should such a test be performed only in the cases where one is due under MiFID II (i.e. where investment advice or portfolio management services are provided)?

ESMA Answer

18-02-2020

Original language

[ESMA35-43-439 Investor protection BRRD regime Q&A1]

As of 28 December 2020[1], all sales of subordinated eligible liabilities (“SELs”) issued on or after that date to retail clients must be subject to the performance by the seller of a suitability test, in accordance with Article 25(2) of MiFID II and of Article 44a of the BRRD 2, independently of the type of investment service provided to sell the SELs (including self-placement). Prior to that date, the suitability test is required only when investment advice or portfolio management are provided, unless where Member States have chosen to apply Article 44a of the BRRD 2 to liabilities issued before 28 December 2020.

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[1] Date of entry into application of BRRD 2.