# ESMA_QA_1130

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14/06/2023

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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**
What information must firms collect from clients in order to comply with Article 44a(1) and 44a(2) of BRRD 2?

## ESMA Answer

14-06-2023

Original language

[ESMA35-43-439 Investor protection BRRD Q&A 3]

In order to comply with Article 44a(1) of [BRRD 2] firms must perform a suitability test in accordance with Article 25(2) of MiFID II. Therefore, for this purpose, firms must comply with the relevant MiFID II requirements on the collection of information from clients (Article 25(2) of MIFID II and Articles 54 and 55 of the MiFID II Delegation Regulation[1]).

Article 44a(2) of BRRD 2 sets out  additional controls that firms must perform, beyond the previously mentioned suitability assessment, when selling SELS to retail clients. In order to comply with this Article, firms' policies and procedures shall enable them to collect from the retail client and assess the information on the retail client's financial instruments portfolio including any investments in SELs held with other firms as per Article 44a(3) of BRRD 2.

The information to be collected from clients for the purpose of Article 44a of BRRD 2 is therefore likely to be broader than the information currently collected by firms for the purpose of the MiFID II suitability assessment as in MiFID II there is no explicit requirement to collect accurate information on SELs held with other firms.[2]

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[1] See also ESMA guidelines on certain aspects of the MiFID II suitability requirements [Ref: ESMA35-43-869 of 28 May 2018]

[2] For the purpose of the MiFID II suitability requirements, firms need to obtain, amongst other things, the necessary information regarding the client's or potential client's "financial situation including his ability to bear losses"  that "shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments". ESMA has noted in its guideline 3 of its MiFID II guidelines on certain aspects of the MiFID II suitability requirements  that "depending on the scope of advice provided, firms should also encourage clients to disclose div on financial investments they hold with other firms, if possible also on an instrument-by-instrument basis".