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Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic
Multilateral and bilateral systems

Subject Matter
Multilateral and bilateral systems - Systematic internalisers

Question
Can a EU branch of a third-country firm operate an SI?

ESMA Answer

01-04-2019

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.30]

MiFID II does not prohibit a branch, including the EU branch of a third-country firm, from operating as an SI in the EU. In this case the branch should fulfil all relevant MiFID II / MiFIR provisions and in particular the obligations attached to SI activity, i.e. Article 14 to 27 of MiFIR. The branch should also meet the criteria set out in the Q&A on 'centralised risk management within a group for the operation of an SI'.

However, as clarified under Article 47(3) of MiFIR, in the absence of an equivalence decision by the European Commission, branches can only operate as SIs in the Member State where they have been authorised. Those branches can therefore only actively serve clients that are located in this Member State.

A branch of a third-country firm is subject to the supervision of the competent authority in the Member State where the authorisation was granted, which is expected to use the supervisory powers under Article 69 of MiFID II, to ensure the compliance by the branch with the SI regime and the related obligations. In this respect, it is also recalled that article 70(2) of MiFID II also require Member States to "*ensure that where obligations apply to […] branches of third-country firms in the case of an infringement, sanctions and measures can be applied, subject to the conditions laid down in national law in areas not harmonised by this Directive, to the members of the investment firms' and market operators' management body, and any other natural or legal persons who, under national law, are responsible for an infringement*".