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03/10/2017

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Additional Information

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

Topic
Systematic internaliser regime

Subject Matter
Transactions that should be included in the calculations

Question
For the purpose of the SI determination, when should an investment firm be considered as “executing client orders” when dealing on own account outside of trading venues?

ESMA Answer

10-10-2025

Original language

[ESMA 70-872942901-35 MiFIR transparency Q&A, Q&A 7.7]

For the purposes of the SIs' determination, ESMA considers that in all circumstances where an investment firm is dealing with a counterparty that is not a financial institution authorised or regulated under Union law or under the national law of a Member State ('financial institution'), the investment firm is deemed to be executing a client order and the transaction should count towards the assessment ~~calculations (both the numerator and the denominator).~~ Where the investment firm is dealing with a financial institution, ESMA considers that one party to the transaction will always act in a client capacity. Therefore, in order to determine when an investment firm is "executing client orders" when dealing on own account outside of trading venues, investment firms need to assess which of the two parties to the transactions acts in the capacity of executing client orders.

Investment firms may determine this either on a transaction by transaction basis or by type of transactions or type of counterparties. Different indicators could be used for determining which party executed a client order: e.g. whether an investment firm has classified the counterparty as a professional client, who initiated the trade or who received the instruction to deal and the extent to which the counterparty relied on the other party to conclude the transaction.

English

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