

Submission Date

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

Level 2 Regulation

Regulation 2017/584 - RTS on organisational requirements for trading venues (RTS 7)

Level 3 Regulation

ESMA70-872942901-38 - Q&A on MiFID II and MiFIR market structures topics

Topic

Direct Electronic Access and algorithmic trading

Subject Matter

Suitability checks and controls of DEA provider

Question

Are the suitability checks and controls a DEA provider should perform on clients using the service also applicable in case of clients that are not investment firms authorised in the EU? Where a DEA client extends its access to its own clients, is the DEA provider responsible for the conduct of these sub-delegated clients?

ESMA Answer

03-10-2017

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 3.22]

Yes, the obligations that fall on a DEA provider as per Article 17(5) of MiFID II and as specified in RTS 6 apply regardless whether the client is an authorised EU investment firms or not. In particular, the DEA provider retains responsibility for all clients accessing an EU trading venue through its DEA, including the sub-delegated DEA clients, in relation to the requirements of Article 17(5) of MiFID II as well as provisions of Articles 19 to 23 of RTS 6.

In order to fulfil its responsibility, the DEA provider must have access to information on its DEA clients, irrespective of DEA clients' jurisdiction or their authorisation status. A DEA provider may not provide services to its clients, including sub-delegated clients, unless all information can be made available to the Competent Authority of the trading venue for its supervisory and enforcement purposes.

The DEA provider should also clarify in the binding written agreement that the DEA service will be suspended or withdrawn from the client if the provider is not satisfied that continued access would be consistent with its rules and procedures for fair and orderly trading and market integrity - this includes a situation where the client fails to supply a reasonable explanation for a suspicious trading pattern or inappropriate trading behaviour that may involve market abuse.

Where a DEA sub-delegation is allowed, the DEA provider should require its DEA clients to have a provision to enable the DEA provider to have access to information on their sub-delegated clients' trading activities for the express purpose of enabling the DEA provider to provide information to the Competent Authority of the trading venue.

Furthermore, trading venues must observe Article 22(3) of RTS 7 when permitting sponsored access, and where appropriate DMA, to their members and participants. TVs should clearly state in their rules the circumstance in which the TV suspends or terminates the provision of DEA, for example, where the conduct of a DEA client is reasonably suspected to be abusive.