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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

Organized Trading facilities OTFs

Question

On what basis can a third party investment firm carry out market making on an OTF on an independent basis (cf. Article 20(5) of MiFID II)?

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Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.14]

As provided for by Article 20(5) of MiFID II, the operator of the OTF may engage another investment firm to carry out market making on the OTF on an independent basis. The independence test is met when the investment firm carrying out market making has no close links with the operator of the OTF as defined under Article 4(1)(35) of MiFID II.

ESMA recalls that, under Article 18(4) of MiFID II, an investment firm operating an OTF must have arrangements in place to clearly identify and manage the potential adverse consequence for the operation of the OTF and its users of any conflict of interest between the interest of the OTF, the investment firm operating the OTF and the sound functioning of the OTF. More generally, ESMA highlights that investment firms must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest from adversely affecting the interests of clients.