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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

Where an investment firm that is an SI has to set up a separate legal entity to operate an OTF (or vice-versa), can those two entities have shared resources?

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Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.16]

Having two separate legal entities operating the OTF and the SI aims at ensuring that each venue is operated to the sole benefit of its respective clients and is not influenced in any way by the activity undertaken by the other venue.

To that end, ESMA is of the view that the two legal entities respectively operating the SI and the OTF should have arrangements in place that prevent information sharing on each other's relevant activities regarding the operation of the OTF and the SI. This would include for instance having distinct management and operational teams and physical separation of activities. Similarly, whereas some elements of the IT infrastructure could be shared, execution systems would be expected to be segregated and safeguards in place to ensure that there is no information leakage across the SI and the OTF activities. Outsourcing from one legal entity to the other should only be considered where the arrangements in place meet a similar test.

The above is without prejudice to the MiFID II provisions on identification and management of conflicts of interest to be met by each of the two investment firms.