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Additional Information

Level 1 Regulation

Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic

Suitability

Subject Matter

Suitability and appropriateness

Question

Does the suitability report only have to be provided if the investment advice leads to a transaction?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II Ch 2 Q&A 1]

No. A suitability report must be provided to a retail client when that client has been provided with investment advice, regardless of whether or not the advice is followed by a transaction.

According to the second subparagraph of Article 25(6) of MiFID II, the firm shall, when providing investment advice, before the transaction is made, provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.

Article 54(12) of the MiFID II Delegated Regulation states that firms shall provide a suitability report when providing investment advice. The report shall, inter alia, include an outline of the advice given and how the recommendation is suitable for the retail client.

By outlining that the report shall be given when providing investment advice, the implementing measures clarify that the suitability report has to be provided to the client irrespective of whether or not the advice is followed by a transaction. In fact, investment advice, as defined in Article 4(2)(4) of MiFID II does not require a recommendation to be followed by a transaction.

The wording in MiFID “before the transaction is made”, is therefore a clarification of when the report has to be provided, but does not mean that the advice has to be followed by a transaction.

This is in line with the purpose of the second subparagraph of Article 25(6) of MiFID II that states that the suitability report serves the purpose of proving whether the recommendation given was in fact suitable for the client.