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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
Can the suitability report be made available to the client on the firm's website, with the client receiving a notification (via email or through any other means of communication) regarding the availability of this document?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II, Ch 2 Q&A 3]

Yes. According to Article 25(6) MiFID II, the suitability report has to be provided in a durable medium. In this regard, Recital 82 of MiFID II clarifies that a durable medium may also be in an electronic form. Websites and other media in electronic form are therefore not excluded so long as they fulfil the definition of ‘durable medium’ as set out in Article 4(1) point 62 of MiFID II and the requirements set out in Article 3 of the MiFID II Delegated Regulation. As to the possibility for a website to be regarded as being a ‘durable medium’, reference is also made to the Judgment of the European Court of Justice of 25 January 2017 (Case C-375/15).

Therefore, the suitability report can be made available to the client in a secured area of the firm’s website, specifically dedicated to that client, with the client receiving a notification (via e-mail or through any other means of communication) of the availability of the document on the website, provided that the choice of that medium is compliant with MiFID II relevant requirements. In particular, it should be consistent with the type of interaction with the client (for example, if the interaction occurs through the telephone or another means of distance communication) and the client has to give his/her consent.