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Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic

Suitability

Subject Matter

Suitability and appropriateness

Question

Where a firm is subject to several record keeping and documentation obligations in connection with the provision of investment advice, is the firm required to draft distinct documents or would one document containing the requirements of all of these different documents be sufficient?

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection , Ch 2 question 8]

MiFID II requires firms to comply with the following record keeping and recording obligations:

- The requirement, included in Article 16(6) of MiFID II, to record all services, activities and transactions;
- The requirement, included in Article 25(6) of MiFID II, to provide clients with reports on all services provided and in particular to provide a statement on suitability in case of the provision of investment advice, regardless of whether or not the investment advice is followed by a transaction (see Q&A 1).

Furthermore, in accordance with Article 16(7) of MiFID II, face-to-face conversations that relate to, at least, transactions concluded when dealing on own account or in the provision of client order services that relate to the transmission and execution of client orders, including such conversations and communications that are intended to result in transactions, shall also be recorded. These conversations may include conversations in the context of the provision of investment advice, if that advice results or may result in the provision of the services of reception, transmission and execution of client orders. The content of these face-to-face conversations may be recorded by using written minutes or notes, according to Article 16(7) of MiFID II and Article 76(9) of the MiFID II Delegated Regulation.

While the requirements²³ have to be complied with individually, it is reasonable to allow firms to draft one single document as long as:

- the content of such document is consistent with all corresponding requirements;

- a record of the document is kept by the firm for the prescribed period;
- when required by one of the corresponding MIFID II provisions the document is provided or made available to the client in the prescribed conditions.