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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
Recording of telephone conversations and electronic communications

Subject Matter
Recording of telephone conversations and electronic communications

Question
Which internal telephone conversations or electronic communications regarding the handling of orders and transactions need to be recorded?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II Investor protection Q&As , Ch3, question 1]

Internal telephone conversations and electronic communications that “are intended to result in transactions” or “relate to” the reception and transmission of orders, execution of orders on behalf of clients and dealing on own account are subject to the MiFID II Article 16(7) recording requirement.

Recital 57 of MiFID II sets out that: “such records should ensure that there is evidence to prove the terms of any orders given by clients and its correspondence with transactions executed by the investment firms, as well as to detect any behaviour that may have relevance in terms of market abuse, including when firms deal on own account”.

As an example, such records should include conversations or communications by which the sales desk will request a quote from the trading desk on a financial instrument before concluding a transaction with a client. It may also include conversations or communications that are within scope and made to or from the sales and research desks.

Therefore, ESMA expects firms to record all internal telephone calls or electronic communications regarding the handling of orders and transactions. However, ESMA would not ordinarily expect persons carrying on back-office functions to be captured by the requirements.

To clarify, the records of any internal face-to-face conversations that relate to the reception and transmission of orders, execution of orders on behalf of clients and dealing on own account will be caught by the general record-keeping requirements under Article 16(6) of MiFID II.