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10/10/2016

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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

Can firms charge their clients to access recordings?

ESMA Answer

10-10-2016

Original language

[ESMA 35-43-349 MiFID II Investor protection Q&As , ch 3, question 2]

MiFID II enables clients to request access to records of telephone conversations and electronic communications kept in accordance with Article 16(7) of MiFID II. ESMA considers that a decision on whether to charge a client for access to such records is within the discretion of the firm. There is no prohibition in MiFID II on this point. However, firms are expected to pay due regard to the national laws in their respective jurisdiction on whether it is permissible to charge clients to access recordings¹.

ESMA therefore expects that, if a firm decides to charge its client, any charge must be reasonable in order not to deter clients from making such requests.

1. Firms should bear in mind that the Article 12 of the Data Protection Directive 95/46/EC states that every data subject should be guaranteed a right of access “without excessive delays or expense”.