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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
The MiFID II Delegated Regulation requires firms to periodically monitor the records of transactions and orders subject to these requirements including relevant conversations and that the monitoring shall be risk based and proportionate. How should these requirements be applied?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II Q&As on Investor protection topics, Ch. 3, question 3]

The monitoring of records of relevant telephone conversations and electronic communications is necessary to assist the firm in ensuring that it is meeting the recording requirements and also adhering to its wider regulatory obligations under MiFID II. For example, it will assist the firm in meeting its wider regulatory obligations which include but are not limited to having policies and procedures in place in respect of its client order handling, best execution, own account dealing obligations and the deterrence and detection of market abuse.

In determining the firm’s approach to monitoring the recording requirements, which includes the frequency and scope of such monitoring, ESMA expects firms to put in place arrangements which are appropriate to the nature, size and complexity of its business.

The approach should consider the likelihood of misconduct in relation to market manipulation or non-compliance with the obligation to act in the best interest of clients in connection with the reception, transmission and execution of client orders and when dealing on own account. In any case, the following criteria should be taken into account when determining the appropriate frequency and scope of monitoring the records: (i) volume and frequency of dealing on own account, (ii) volume, frequency and characteristics of client orders, (iii) characteristics of clients, (iv) financial instruments and services offered and (v) current market conditions with regard to specific securities. This list is non-exhaustive.

Furthermore, the results of any monitoring activities (including the risk assessment carried out by the compliance function) and of any relevant internal or external audit findings on the recording of conversations and electronic communications should be taken into account to determine the frequency and scope of the monitoring.

The monitoring should be conducted regularly and when necessary on an ad-hoc basis. Due regard should also be given to any emerging risks.

The monitoring should at least aim at:

· assessing compliance with recording procedures in place,

· assessing the adequacy of such procedures,

· ensuring that the records are readily accessible; and

· ensuring that the records accurately reconstruct the audit trail of a transaction.