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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
Recording of telephone conversations and electronic communications

Subject Matter
Recording of telephone conversations and electronic communications

Question
Under Article 16(7) of MiFID II, competent authorities may request that a firm keeps the records for up to a period of seven years, rather than five years. In such cases, what are the expectations by competent authorities on the retention of records?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II Investor protection topics Ch3, question 4]

Firms are required to keep records produced under Article 16(7) of MiFID II for five years, with the extension to seven years, if requested by the competent authority. For example, extensions may occur when a competent authority undertakes complicated regulatory investigations in the course of exercising its supervisory powers. This can also occur, for instance, when the competent authority is conducting an investigation on an issue dating several years prior to the start of the inquiry. If a competent authority has not made a request to a firm to put aside recordings within five years from the beginning of the retention period, the firm does not have to keep those recordings for longer than five years from when the record was created. However, if within five years from when the record was created, a competent authority asks firms to retain the recordings, recordings should stop being deleted and should be retained until the competent authority needs them or the competent authority indicates that the recordings are no longer of interest.

Where a firm has been asked to preserve information which may be of interest and the competent authority subsequently concludes that they have no further interest in that information, the competent authority should inform the firms as quickly as possible. If a firm is unclear on whether it should continue to retain material, it should contact the competent authority for confirmation of the position. Nevertheless, no request from the competent authority can extend the retention period for firms beyond seven years.