ESMA_QA_1777

Submission Date
10/10/2016

Status: Answer Published

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
What telephone conversations and electronic communications should be recorded in accordance with Article 16(7) MIFID II?

ESMA Answer

10-10-2016

Original language

[ESMA35-43-349 MiFID II Q&As on Investor protection Ch. 3, question 11]

In ESMA’s view, the following stages of conversations and electronic communications26 that relate to the provision of client order services or dealing on own account will be caught by the rules:

- Conversations or communications with a client, or a person acting on behalf of such a client, which relate to an agreement by the firm to carry out one of the covered activities, whether as principal or agent.

- Conversations or communications with any other person, which relate to transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders. This should include telephone conversations or electronic communications such as: transmitting an order to a broker or placing an order with an entity for execution, conversations or communications relating to the handling of an order (including solicitations and acceptance of transactions).

Also included, are any other conversations or communications which are carried out by the firm with a view to reach an agreement to carry out one of the covered activities, whether as principal or agent, even if those conversations or communications do not lead to the conclusion of such an agreement[1]. This should include conversations and communications regarding prices, solicitations, bids, offers, indications of interest and requests for quotes.

Firms should have in place policies and procedures to ensure that no relevant telephone conversations or electronic communications are done through communication systems which are not recorded.

Firms will have to decide which devices these relevant conversations or communications will take place on and ensure the effectiveness of their arrangements. Firms will have to ensure that relevant persons are trained on the procedures governing the requirements in Article 16(7) MiFID II[2].

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1. Second sub-paragraph of Article 16(7) MiFID II.

2. Article 76(5) of MiFID II Delegated Regulation.