

Submission Date

16/12/2016

ESMA_QA_1787

Status: Answer Published

Additional Information

Level 1 Regulation

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic

Underwriting and placing

Subject Matter

Underwriting and placing

Question

What records should be kept by firms when providing underwriting or placing services and how should firms justify their final allocations to each investment client?

ESMA Answer

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 6, question 3]

In order to be able to demonstrate to NCAs how they meet their obligations to the issuer client when providing underwriting and placing services, as well as their obligation to manage conflicts of interest between different clients or groups of clients, firms should have a process to record allocation decisions at material stages in the allocation process.

Records of allocations decisions should include:

- a. The firm's overarching allocation policy under Article 40(4) in force at the time of the commencement of the service;
- b. The firm's initial discussion with the issuer client and the agreed proposed allocation per type of investment client, as required by Article 40(5);
- c. The content and timing of allocation requests received from each investment client with an indication of their type;
- d. Where relevant, any further discussion and instructions or preferences provided by the issuer client, other members of the syndicate, or the firm itself, on the allocation process, including any emerging in light of allocation requests received from investment clients;
- e. The final allocations registered in each individual investment client's account.

Firms must provide a justification for the final allocation made to each investment client. For this purpose, a justification should explicitly provide detailed reasoning behind the final allocation unless firms can evidence that such detail has been provided through records maintained at stages (a-e) in the allocation process. Particular care should be given to justifications to any investment clients that appear in either of the following two rankings of the final allocation:

1. investors that receive a final allocation (recorded in (e) above) in the top 20% of the total allocation ranked by investor in descending order of size of allocation to each investor; or
2. investors that receive a final allocation in the top 20% of the total allocation ranked by investor in descending order of the percentage allocation granted to each investor divided by the percentage bid by each investor (i.e. the relative extent to which each investor has their order (recorded in (c) above) reduced in the final allocation (recorded in (e) above)).