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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
Inducements (research)

Subject Matter
Inducements

Question
What is the legal status of money held in a research payment account (RPA) established under Article 13(1)(b) of the MiFID II Delegated Directive, prior to it being used to pay providers for research?

ESMA Answer

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investment protection Ch. 7, question 2]

Under Article 13 of the MiFID II Delegated Directive, where an investment firm chooses to use an RPA, this must be funded by a research charge to the client.

The nature of this deduction as a charge means that once it is deducted from a client, the funds belong to the firm. However, this research fund should be managed in an RPA controlled by the investment firm and it should be used specifically for purchasing external research to benefit the client. ESMA is of the opinion that it is important that the investment firm makes its best efforts to align as much as possible the timing of the charges paid by the client to the firm, and the expenditure on research paid from the RPA by the firm to the research provider.

The obligation on the investment firm to have a process by which it can rebate surplus funds if it underspends the original research budget for a set of portfolios under Article 13(5) of the MiFID II Delegated Directive29 does not alter the status of RPA money. Only when a rebate has been made into a client's account would it be considered as client assets.

When administration of the RPA is outsourced, the investment firm should maintain legal control over RPA funds until such time as it decides to make a payment to a research provider. Each payment and its amount should be decided with reference to the quality criteria established by the firm itself in its research policy and its assessment of the need for research in the best interest of the client.

The investment firm must be satisfied that through the outsourced agreement it continues to retain full discretion and control over the use of the account.

The money should be ring-fenced and clearly separated from other funds of the RPA Administrator, such that they remain legally owed to the investment firm.

The third party provider should have no right of set-off over the money or be entitled to use it as collateral or otherwise for their own benefit.