ESMA_QA_1791

Submission Date
16/12/2016

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
Inducements (research)

Subject Matter
Inducements

Question
How should an investment firm deal with unrequested research that is provided free of charge?

ESMA Answer

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investment protection Ch. 7, question 3]

The provision or reception of research by an investment firm is subject to the rules on inducements in Article 24, paragraphs 7, 8 and 9, of MiFID II, depending on the firm's investment activities.

Firms need to have in place policies and systems to assess the nature of any service, benefit or material paid or provided by any third party to determine whether they can provide or accept it. It is not acceptable for firms to receive research for free where no assessment has been made under the above inducements rules or there is no payment arrangement in place that complies with Article 13 of the MiFID II Delegated Directive.

A firm providing independent investment advice or portfolio management services can only receive research in relation to those activities by complying with Article 13 of the MiFID II Delegated Directive30. In this context, firms should not accept research for 'free'.

In relation to services or activities other than those covered under Articles 24(7) and 24(8), a firm providing or receiving research services must assess whether the provision or receipt of the research service meets the quality enhancement test (and the other conditions in Article 24(9)) or decide whether it intends to pay for the research directly or through a separate RPA under Article 13 Delegated Directive.

Where a firm does not want to accept research material, they should take reasonable steps to cease receiving it or avoid benefitting from its content, for example by automatically blocking or filtering certain senders/materials where practicable, and / or requesting a provider to stop providing research, and / or using the compliance function of the firm to monitor, assess and determine whether the material can be accepted before it reaches those parts of the firm that would make use of it. As proportionate to the nature, scale and complexity of its business, a firm should also provide adequate training and / or information to

staff to ensure they understand the inducements obligations and the firm's specific approach to receiving research, for example whether or not they have budgeted research expenses or have agreements in place for the provision of research with particular providers to meet Article 13 of the MiFID II Delegated Directive. A firm could also consider having a process whereby staff can report to compliance or senior management any cases of unsolicited research being provided to them from a third party where no payment arrangement or agreement is in place.

Where the provider of research is a firm which also provides execution services under MiFID, and is subject to Article 13(9) of the MiFID II Delegated Directive, the provision of unsolicited (or 'free') research would not meet the obligation on them to price services separately, and ensure its supply does not potentially influence the execution services they supply. On that basis, firms should have systems and controls in place to enable them to cease providing unsolicited research.