European Securities and Markets Authority

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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

Subject Matter
Inducements

Question
What approach should a firm take to research provided from another group entity?

ESMA Answer

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor Protection Ch. 7, question 5]

The MiFID inducements rules apply in the same manner irrespective of the relationship between the provider of fees, commissions or monetary or non-monetary benefits and the firm receiving them, (i.e. irrespective of being part of the same group or not).

On this basis, firms subject to MiFID inducements rules need to either assess whether accepting the inducement (research) is compliant with Article 24(7), (8), (9) and the relevant level two provisions or decide to use the arrangements in Article 13 of the MiFID II Delegated Directive. In the latter case, firms should pay particular attention to any potential conflicts of interests as well as their obligations to assess the quality of research and keep appropriate controls and oversight over the amounts paid with reference to the quality criteria mentioned beforehand. Alternatively, the firm could refuse to accept research from other intra-group entities.

Where firms do seek to receive third party research from or provide it to other group entities using an RPA model under Article 13 of the MiFID II Delegated Directive, the requirement on the EU firm to ensure a research budget is used and managed in the best interests of their clients and that the costs of research are allocated fairly between client portfolios under Article 13(6) and 13(8) of the MIFID II Delegated Directive will be particularly important. The commercial preference of a firm to operate as part of a global business model does not override their obligations under Article 13 if using an RPA. The firm will need to ensure their systems, controls and oversight of research spending and cost allocation to clients are sufficient to meet all the requirements linked to an RPA, notwithstanding that this may require some changes to their business model.

Alternatively, there remains the option for the firm to pay for research with direct payments from their own resources if the RPA and research charge mechanism is deemed too complex.