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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

Can the service of a third party arranging meetings with the management of a corporate issuer for an investment firm ('corporate access') be considered as research that can be paid for from an RPA under Article 13(1)(b) of the Delegated Directive, and if not, how should firms providing independent investment advice or portfolio management services treat such

services?

ESMA Answer

04-04-2017

Original language

[ESMA 35-43349 MiFID II Q&As on Investor protection Ch. 7, question 7]

Recital 28 provides a definition of research for the purpose of the RPA model. Arranging a meeting itself is not providing material or services which “explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of such instruments or assets” so does not appear to be ‘research’ and should be considered a discrete service.

This does not preclude an investment firm that arranges such meetings, and also supplies research and execution services, from being paid for research services from an RPA, but the firm should ensure their pricing and payments received from firms purchasing its research are not subsidising a charge for the corporate access (concierge) service. This is consistent with Article 13(9) of the Delegated Directive, which applies to firms providing execution services, which specifies that “the provision of each other benefit or service by the same investment firm to investment firms established in the Union shall be subject to a separately identifiable charge.”

ESMA expects investment firms subject to Article 24(7) or Article 24(8) of MiFID II to carefully assess whether corporate access services such as field trips, conferences and individual meetings involving a corporate issuer and facilitated by an investment firm are material benefits, or alternatively could qualify as an acceptable minor non-monetary benefit.

For example, corporate access services offered by a third party that are by their nature exclusive, such as individual meetings or field trips with a corporate, may involve the

allocation of valuable resources by the provider (Recital 30 of the Delegated Directive) and / or have a value to the recipient such that the benefit is not minor in nature and scale and could influence their behaviour (Article 12(3) of the Delegated Directive). Conversely, ESMA considers that where a corporate's investor relations office (or its 'house broker' if the service is paid for by the issuer) organises investor 'road shows' to support a capital raising event and it is freely and publicly open to analysts from investment firms and other investors it could be capable of qualifying as acceptable minor non-monetary benefits under Article 12(3). As set out in Q&A 6, it will be for the recipient investment firm to determine whether or not it can accept a benefit.

However, ESMA notes that an investment firm can also treat corporate access as a commercial service and pay for it appropriately from its own resources. In such cases, it is important that the provider prices services at commercial levels and access itself is not linked to or dependent on payments for research or execution services where the provider offers these other MiFID services. This should ensure there is no inducement risk under the MiFID II obligations.

There also remains the option for an investment firm wishing to meet with a corporate issuer individually to approach them directly and/or pay for a third party corporate access service provider to facilitate meetings that does not provide other MiFID investment services. This removes the primary potential conflict of interest or inducement risk that could arise if meetings are provided by another MiFID firm with whom they have other commercial relationships.