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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 macro-economic analysis be considered research that can be paid for from an RPA and client research charges under Article 13(1)(b) of the MiFID II Delegated Directive?

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Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch.7, question 8]

Macro-economic analysis is a relatively broad term. Whether it can be considered research will depend on its nature and content, which should be considered against the criteria set out in Recital 28 of the MiFID II Delegated Directive. This recital provides an expansive interpretation of what counts as value-added analysis that can inform investment decisions across a variety of financial instruments and asset classes.

In particular, the following two conditions need to be met:

1. The material or service must concern one or several financial instruments or other assets, or current or potential issuers of financial instruments, or be closely related to a specific sector or market such that it informs views on financial instruments, assets or issuers within that sector or market. And,
2. This material or service explicitly or implicitly recommends or suggests an investment strategy and provide a substantiated opinion as to the present or future value or price of such instruments or assets, or contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

ESMA considers, as a starting point, that most macro-economic analysis is likely to, explicitly or implicitly, suggest an investment strategy (e.g. by providing views on inflation expectations, economic growth, the interest rate curve or currencies for certain countries or regions), although some macro-economic material may be sufficiently general to fall outside the definition.

If macro-economic analysis is classified as research, it has the advantage that such research material is then capable of being received (and paid for) by an investment firm, including (independent) investment advisers and portfolio managers, under Article 13 of the MiFID II Delegated Directive.

Where macro-economic analysis is substantive or involves the allocation of valuable resources by a provider to an investment firm, based on Recital 30, or is deemed to have a material value by a recipient firm, it will not constitute a minor non-monetary benefit satisfying the criteria set out in Article 12(3) of the MiFID II Delegated Directive. Therefore, if macro-economic analysis is not considered as research, it does not automatically classify as a minor non-monetary benefit. In this case, portfolio managers and independent advisors would need to make a commercial decision either to pay for it from their own resources or else not accept such benefits or services. Firms providing other services would need to assess it against Article 24(9) of MiFID II and the relevant delegated provisions.

One exception would be where a provider makes macro-economic-related material openly available at the same time to any investment firms or to the general public on a website. Material made available in this way could be justified as a minor non-monetary benefit – representing “information ... relating to a financial instrument or investment service” that is “generic in nature” under Article 12(3)(a) of the MiFID II Delegated Directive. ESMA considers that ‘openly available’ in the context of written material should mean that there are no conditions or barriers to accessing it, for example a necessary log-in or sign-up, or the submission of user information by a firm or a member of the public, in order to access material.

Examples in Q&A 6 may also further inform firms’ judgements with respect to macro-economic analysis.

ESMA considers that, unlike more asset or sector-specific analysis, macro-economic research is likely to be relevant to (and able to inform), a variety of strategies and asset allocation decisions across a multiplicity of portfolios. For example, investment firms seeking to comply with Article 13 of the MiFID II Delegated Directive when receiving macro-economic analysis may be able to more easily justify paying for it on a subscription basis and allocating costs more broadly across many of its clients’ portfolios and accounts. Similarly, providers of macro-economic research may choose to price access to written content on a similar basis, although pricing models remain a commercial decision for firms.