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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
Is a free trial period of research services acceptable when it is provided in relation to portfolio management or advice on an independent basis?

ESMA Answer

12-07-2018

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 7, question 12]

Based on Article 13(1) of the MiFID II Delegated Directive, research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if the investment firm pays for it, either out of its own resources or through payments from a separate research payment account controlled by the investment firm.

In the case of a free trial period, the investment firm does not pay for its access to research. Hence, its access to third-party research under a free trial period is qualified as an inducement (a non-monetary benefit) where it is provided in connection with the provision of an investment service or an ancillary service. Based on Article 12(2) of the MiFID II Delegated Directive, an investment firm should not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits.

In accordance with Article 12(3)(e) of the MiFID II Delegated Directive, minor non-monetary benefits not listed in Article 12(3)(a) to (d) may nonetheless be qualified by Member States as acceptable if they are deemed capable of enhancing the quality of the service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interest of the client. In addition, Article 12(3) of the MiFID II Delegated Directive requires that acceptable minor non-monetary benefits shall be reasonable and proportionate and of such a scale and nature that they are unlikely to influence the investment firm’s behaviour in any way that is detrimental to the interests of the relevant client. Furthermore, based on Recital 30 of the MiFID II Delegated Directive, any non-monetary benefit that involves a third party allocating valuable resources to the investment firm shall not be considered as minor and shall be judged to impair compliance with the investment firm's duty to act in their client’s best interest.

It has been brought to ESMA's attention that the practice of free trial periods in relation to research services has been raising many questions across the Union. ESMA considers that it is appropriate to issue some guidance on whether free trial periods of research services may qualify as acceptable minor non-monetary benefits under Article 12(3)(e) of the MiFID II Delegated Directive.

ESMA is of the view that free trial periods of research services (i.e. research that is received so that the firm may evaluate the research provider's research service before deciding whether or not to enter into a contract or arrangement for the provision of research services for a fee) may qualify as minor non-monetary benefits under Article 12(3)(e) of the MiFID II Delegated Directive provided that:

- the trial period must be offered and agreed upon prior to the decision to enter into a contract or arrangement relating to the provision of research services for a fee;
- the scope and extent of the research services offered during the trial period must be agreed upon by the parties prior to the start of the trial period;
- the trial period must be strictly defined and limited in time and, in any case, shall not last for longer than three months;
- no monetary or non-monetary consideration is due by the research recipient during the trial period (this includes implicit benefits such as abnormally high order flows with the research provider compared to volumes normally carried out with the research provider or an entity part of the same group);
- the trial period is not commenced within twelve months from the termination of an arrangement for the provision of research (including any previous trial period) with the same research provider;
- the firm has controls in place to ensure that the research received during the trial period is not billed to its clients; and
- the firm makes and retains a record of how the conditions above were satisfied for each such trial period.