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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
Reporting to clients

Subject Matter
Post-sale reporting

Question
How does a firm fulfil the obligation to report if the values of a client's leveraged financial instruments or contingent liability transactions depreciate by a 10% threshold on a particular business day, if a firm's automated systems do not provide valuations throughout the day for all the instruments held?

ESMA Answer

16-12-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 8, question 3]

In line with the response to Q&A 1 (on portfolio reporting), in order to identify whether there has been a depreciation by 10% or more, a firm could set a fixed daily valuation point for its leveraged financial instruments and inform clients in the same time frame set out in Q&A 1.

Article 62(2) of the MiFID II Delegated Regulation requires firms to report to clients that hold positions in leveraged financial instruments or contingent liability transactions, where the initial value (original cost) of each instrument depreciates by 10% and thereafter at multiples of 10%. It applies on an instrument-by-instrument basis, unless otherwise agreed, and shall take place no later than the end of the day in which the threshold is exceeded. MiFID II Delegated Regulation, Recital 96 states that a ‘contingent liability transaction’ should involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument. There is no similar explanation of what a ‘leveraged financial instrument’ is. However, given Recital 96 and the objective of Article 62(2), firms should conclude that if a financial instrument has the potential of magnifying an investor’s exposure to an underlying risk then this will result in the instrument being a leveraged financial instrument.