ESMA_QA_1830

Submission Date
03/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Information to clients on costs and charges

Subject Matter
Information on cost and charges

Question
How should an investment firm assess, in accordance with Article 50(1) paragraph 3 of the MiFID II Delegated Regulation, that an eligible counterparty does not intend to offer the financial instruments to its clients?

ESMA Answer

03-10-2017

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 9 , question 18]

Without prejudice to the obligations set out in Article 24(4) MiFID II and the requirement to provide information on all costs and charges to all clients and potential clients, investment firms providing investment services to eligible counterparties shall have the right - in accordance with Article 50 of the MiFID II Delegated Regulation - to agree to a limited application of the detailed requirements set out in Article 50, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

Investment firms are expected to apply the full cost and charges disclosure regime as the default option, and only to apply the limited flexibility allowed under Article 50(1) as further explained under recital 74 when there is an agreement to do so and the eligible counterparty has indicated that it does not intend to offer the financial instrument to its clients. ESMA expects investment firms to have procedures in place aiming at recording eligible counterparties' agreement and intention not to offer such financial instruments to their clients.