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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

Client categorisation

Subject Matter

Client categorisation

Question

When should an investment firm assess whether a private individual investor may be treated as a professional client under Section II of Annex II of MiFID II?

ESMA Answer

25-05-2018

Original language

{ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 11, question 2}

Pursuant to Section II of Annex II of MiFID II, a private individual investor may be allowed to waive some of the protections afforded by the conduct of business rules set in MiFID II by requesting to be treated as a professional client. This request must be made by the client in writing and at its own initiative. This written statement shall indicate whether the client asks to be treated as a professional client generally (i.e. for all future transactions and investment services) or in respect of a particular investment service or transaction, or type of transaction or product. This written statement should be in a separate form from contracts or other terms of business. As further discussed in question 2 below, investment firms must perform the assessment and follow the procedure set in Section II of Annex II of MiFID II prior to deciding whether it considers it appropriate to accept such a request.

Investment firms should strictly refrain from implementing any form of practice that aims at incentivising, inducing or pressuring a private individual investor to request to be treated as professional client.