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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
How should an investment firm assess whether a private individual investor has carried out transactions of a “significant size” in accordance with the first limb in the fifth paragraph of Section II.1 of Annex II of MiFID II?

ESMA Answer

05-05-2018

Original language

[ESMA 35-43-349 Q&As on MIFIDN II Investor protection Ch 11, question 4]

When assessing whether a client transaction is of a significant size, investment firms shall, inter alia, take into account the size of transactions on the relevant market. For the purpose of determining the relevant threshold, the scope of the analysis should not be limited to (the size of) transactions previously carried out by the relevant client or by clients of the relevant investment firm on the relevant market.

To assess whether transactions are of a significant size, investment firms should consider whether the transactions were individually large enough to provide the client with meaningful exposure to the relevant market so that it contributed to the client’s acquiring the required expertise, experience and knowledge of the transactions or services envisaged.

In relation to leveraged positions or financial instruments for which a margin is deposited, ESMA considers it likely that the typical notional value of transactions in such financial instruments will be commensurately higher than in non-leveraged products, and therefore would expect firms to assess “significant size” at a level appropriate to that market. In the case of derivatives, a firm may also need to consider if the “relevant market” should be distinguished by the underlying asset class, index or reference price to which exposure is provided to ensure “significant size” is appropriately assessed.