ESMA
European Securities and Markets Authority

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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
In connection with an investment firm providing investment advice on an independent basis or portfolio management services, what is, with a perspective on Chapter II of the implementing directive,the legal status of a fee, commission or monetary benefit, after it has been received by an investment firm from a third party or a person acting on behalf of a third

party as an inducement, and prior to it being transferred in full by the investment firm to the client?

ESMA Answer

10-11-2017

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch. 12, question 2]

Article 12(1) of the MiFID II Delegated Directive requires that all fees, commissions or any monetary benefits received from a third party, or person acting on behalf of a third party, in relation to the provision of independent investment advice or portfolio management shall be transferred in full to the client. Once it is received by an investment firm from a third party or a person acting on behalf of a third party, and prior to the transfer to the client, the fee, commission or monetary benefit should be considered a liability of the investment firm, which is subject to the obligation in Article 12(1) of the MiFID II Delegated Directive to return the money to the client "as soon as reasonably possible after receipt".

The terms of business and/or contractual arrangements in place between the investment firm and a client should document how inducements are treated by the investment firm, including how the regulatory obligation to transfer such money to a client is discharged and the status of fees, commissions or monetary fees in case of insolvency. Such arrangements should provide for the transfer of the inducement by transferring to a client asset account, if the client holds a client asset account with the investment firm, or provide for some other means, such as, by cheque or bank transfer to the client's account held externally. In any event, an investment firm must have systems and controls in place to transfer the money to the client as soon as reasonably possible after receipt. As set out in Recital 74 of MiFID II, an investment firm is not permitted to offset the inducement from any fees owed by the client to the firm.