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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

Subject Matter

Inducements

Question

Does an investment firm receiving a payment for the marketing of one or more investment funds from a UCITS management company or an AIF Manager have to comply with the MiFID II inducements requirements in relation to these payments, when the investment firms provides investment services to other clients that relate to those same investment funds?

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Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 12, question 4]

As explained in Question 3 [Q&A 1858] , it is important to determine if the payments received by the investment firm for the provision of the function of marketing can be said to be paid in relation to, or in connection with, the provision of investment services to its clients when these services concern the UCITS or AIFs marketed¹.

ESMA considers that the function of marketing of UCITS or of AIFs, on the one hand, and the provision of investment services with regard to the same UCITS or AIFs by an investment firm to its own clients, on the other hand, are closely related. In such a situation, therefore, payments received for the provision of the function of marketing would be considered as falling under the MiFID II inducements requirements² and investment firms providing investment services to their clients should comply with the relevant inducements requirements (for example, when providing the service of reception and transmission of orders in relation to these UCITS they should, inter alia, comply with the quality enhancement requirement and the other requirements in accordance with Article 24(9) of MiFID II).

The same reasoning as above would apply when the investment firm performs the function of marketing of one or more investment funds directly for such funds (in the case of internally managed funds) and the investment firm also provides investment services to its other clients in relation to those same funds.

1. For example, where an investment firm receiving payments for the marketing of a UCITS/AIF fund on behalf of the UCITS management company or AIF Manager also recommends to its own clients to buy such UCITS/AIF fund; or where the investment firm also provides portfolio management to its own clients and invests on their behalf in the same UCITS/AIF fund.

2. This is without prejudice to the relevant provisions on inducements imposed by UCITS/AIF Directives.