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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

Does an investment firm receiving a payment for performing the function of administration (1) of one or more investment funds from a UCITS management company (2) or an AIF Manager(3) have to comply with the MiFID II inducements requirements in relation to these payments, when the investment firm provides investment services to other clients that relate

to those same investment funds?

ESMA Answer

18-12-2017

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 12, question 5]

As explained in Question 3 [Q&A 1858] above, from the perspective of the firm's relationships with its clients other than the UCITS management company or AIF Manager, it is important to determine if the payments received by the investment firm for the provision of the function of administration are in relation to, or in connection with, the provision of investment services to its clients when these investment services concern the UCITS or AIFs administered.⁴

In principle, administering UCITS or AIFs on behalf of a UCITS management company or an external AIF Manager should not be regarded as an activity that is carried on in relation to, or in connection with, investment services provided by the investment firm to its other clients. Therefore payments received by the investment firm as remuneration for the provision of a legitimate genuine function of administration on behalf of a UCITS management company or an external AIF Manager are deemed to remain outside the scope of the MiFID II inducements requirements.⁵

As for the function of investment management (Question 3), the analysis may be different if there are elements which suggest that the delegation is neither legitimate (for example, there is no specific expertise within the investment firm regarding the function of administration), nor effective (for example, there are no, or no sufficient operational measures adopted by the investment firm to fulfill the function of administration).⁶ Case-by-case analysis of arrangements may thus suggest that payments received for the provision of the function of administration could be considered as a mere circumvention of the MiFID II inducements requirements. In the course of such a case-by-case analysis, attention must be paid to the

fee structure: the level and method or manner of calculation or composition of payments received for the provision of the function of administration should be proportionate to the function effectively provided and comparable to the level of fees usually paid for the provision of that, or an equivalent, function.

The considerations on the management of conflicts of interest contained in the answer to Question 3 [Q&A1858] equally apply here.

The same reasoning as above would apply when the investment firm performs the function of administration of one or more investment funds directly for such funds (in the case of internally managed funds).

1. In accordance with, respectively, Article 13 of Directive 2009/65/EC of 13 July 2009 (UCITS Directive) or Article 20 of Directive 2011/61/EU of 8 June 2011 (AIFM Directive).
2. Within the meaning of bullet point 2 of Annex II of the UCITS Directive.
3. Within the meaning of point 2(a) of Annex I of the AIFM Directive
4. For example, where an investment firm receiving payments for the administration of a UCITS/AIF fund on behalf of the UCITS management company or AIF Manager also recommends 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.
5. This is without prejudice to the relevant provisions on inducements imposed by UCITS/AIFM Directives.
6. In this regard, it should be noted that compliance with the conditions set out in Article 13 of the UCITS Directive or in Article 20 of the AIFM Directive for the delegation of functions of the UCITS/AIF is also relevant for the correct assessment that such delegation arrangements are legitimate and effective.