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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

How should investment firms providing the investment service of portfolio management treat inducements received after 3 January 2018 with regards to financial instruments in which the firm has invested on behalf of the client before that date?

23-03-2018

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 12, question 6]

According to Article 24(8) of MiFID II, investment firms providing the investment service of portfolio management shall not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party (or a person acting on behalf of a third party) in relation to the provision of such an investment service to clients.

These requirements apply not only to any fee, commission or monetary or non-monetary benefit received by a portfolio manager in relation to investments in 'new' instruments undertaken from 3 January 2018 onward, but also with respect to any ongoing inducement the firm may be receiving in relation to financial instruments in which the firm has invested on behalf of the client prior to that date.

This means that only ongoing inducements accrued until 2 January 2018 can be received (so long as they are compliant with MiFID I requirements). ESMA is of the opinion that investment firms should be able to demonstrate and document that such inducements only concern the period prior to 3 January. From 3 January 2018, the firm has to: (i) transfer to its clients such fees, commissions or monetary benefits paid or provided by any third party; or (ii) change any existing arrangements in place with third parties so as to no longer receive any inducements from them.