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Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Provision of investment services and activities by third country firms

Subject Matter
Provision of investment services and activities by third country firms

Question
What are practical examples of investment products belonging to different categories within the meaning of Article 42 of MiFID II and Article 46 of MiFIR and Q&A 2 [Q&A 1863] (see above)?

ESMA Answer

12-07-2018

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 13, question 3]

This answer complements Q&A 2 [Q&A 1863] on reverse solicitation and aims at providing a non-exhaustive list of pairs of investment products which should not be considered as belonging to the same category for the purpose of the reverse solicitation regime as set out by Article 42 of MiFID II and Article 46 of MiFIR:

- a non-complex debt instrument (as referred to under point (a) of Article 25(4) of MiFID II), and a debt instrument embedding a derivative or incorporating a structure which makes it difficult for the client to understand the risk involved (see Sections V.I. and V.II. of the ESMA guidelines on complex debt instruments and structured deposits)
- a debt instrument admitted to trading on a regulated market or on an equivalent third-country market or on a MTF and a debt instrument not admitted to trading on a regulated market or on an equivalent third-country market or on a MTF;
- a non-complex money-market instrument(as referred to under (a) of Article 25(4)), and a money-market instrument embedding a derivative or incorporating a structure which makes it difficult for the client to understand the risk involved (see Sections V.I. and V.II. of the ESMA guidelines on complex debt instruments and structured deposits) ;
- a non-complex structured deposit (as referred to under point (a) of Article 25(4) of MiFID II), and a structured deposit incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term (see Sections V.III. and V.IV. of the ESMA guidelines on complex debt instruments and structured deposits);
- a subordinated debt instrument and a senior debt instrument;
- a common share issued by a company and a unit or share issued by an ETF;
- two shares belonging to two different stock-exchange segments;
- a share admitted to trading on a regulated market or on an equivalent third-country market or on a MTF and a share not admitted to trading on a regulated market or on an

equivalent third-country market or on a MTF;

- a share embedding a derivative and a share that does not embed a derivative;
- a share or unit in a UCITS and a share or unit in an AIF;
- two AIFs applying two different types of investment strategies as referred to in Annex 4 of Commission Delegated Regulation No 231/2013;
- two packaged retail investment products with different features such as a different summary risk indicator, as featured in their respective key information documents according to Regulation (EU) N° 1286/2014;
- a share or unit in a non-structured UCITS and a structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;
- two financial instruments with different underlying asset classes (e.g. government bonds vs high yield corporate bonds).

For financial instruments, it is reminded that two instrument belonging to a different category of Annex C (1) to (11) are considered as different investment products for the purpose of Article 42 of MiFID 2 and 46 of MiFIR.