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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

Provision of investment services and activities by third country firms

Subject Matter

Third-country firms marketing directly

Question

Article 42 of MiFID II allows third-country firms to market products and services directly (without the need of a branch) to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II if this is done at the client's own exclusive initiative (reverse solicitation exemption), specifying that in such a case the firm in question may also offer the

client products and services from the same category. Does this mean that a firm that, within the context of a one-off service to the client, has sold, or has had the opportunity to sell, a product or service under this rule may in the future again offer products or services from the same category (i.e. outside the context of the request of the client)?

ESMA Answer

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Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection Ch 13, question 4]

No. The reverse solicitation exemption is based on the premise that the product or service is marketed at the client's own exclusive initiative¹ and can only be applied to the specific product or service requested ("the requirement for authorisation under Article 39 shall not apply to the provision of that service or activity by the third-country firm").

Therefore, when providing a one-off investment service² to a client, the third-country firm may not sell to that client (without establishing a branch if so provided for by national law) a product or service from the same category³ unless requested to do so by the client at its own exclusive initiative and only at the time the client asks for an investment product or service.

Therefore, during the course of a transaction, the firm may offer the client another product or service of the same category as the one requested by the client but not at a later stage unless the client specifically requests it at its own initiative (e.g. if the client contacts the third-country firm to buy a share, the firm could - at this moment in time - market to the client other shares from the same stock-exchange segment. However, the firm would not be entitled to market more shares to the client a month later, unless this is done through a branch).

1. On this topic see Q&A 1 [Q&A 1862] of this Section.

2. On this topic see also Q&A 1 of Chapter 15 of this document.

3. On this topic see also Q&A 3 [Q&A 1864] of this Chapter.