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30/07/2018

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Additional Information

Level 1 Regulation

Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic

Product intervention

Additional Legal Reference

ESMA Decision 2018/795; ESMA Decision 2019/796

Subject Matter

Structured finance products

Ouestion

Are structured finance products within the scope of the BO Decision or the CFD Decision?

ESMA Answer

30-07-2018

Original language

[ESMA 35-36-1262 Q&A Product intervention, Q&A 5.11]

No, structured finance products are not within the scope of the BO Decision or the CFD Decision.

"Structured finance products" are defined in Article 2(1)(28) of MiFIR as "those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets". Article 1(a) of the CFD Decision, on the other hand, defines a CFD as a derivative with a "long or short exposure to fluctuations in the price, level or value of an underlying".

These are therefore two distinct types of products, one type that provides a payment originating from the cash flow of the underlying assets (structured finance products) and another type that provides a payment from the CFD provider based on differences in the price, level or value of an underlying and which depends on whether a long or short position has been taken (CFDs).