ESMA_QA_2172

Submission Date
07/05/2024

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Client categorisation

Subject Matter
Two classifications for one client

Question
Assuming that the investor disclosure requirements are predefined in legal documents and agreements, is it possible to select two client categories for a professional client (such as per se eligible counterparty and professional client)?

ESMA Answer

11-07-2024

Original language

Yes. More generally, it is possible to have clients categorised in two different client categories, depending on the investment service or activity provided or even the financial instrument. Nevertheless, if the client is classified into different categories, they must be clearly informed, for each relevant category, which financial instruments, investment services, and activities fall under it.

As an example, under Annex II of MiFID II, a retail client may waive the benefit of certain MiFID II rules of conduct by stating in writing to the investment firm that they wish to be treated as a professional client, "*either generally or in respect of a particular investment service or transaction, or type of transaction or product*". As such, one client may be treated as retail for one investment service and/or type of financial instrument but as a professional client for a different combination of service and product.

Similarly, a client qualifying as a *per se* eligible counterparty for the services of execution of orders, reception and transmission of orders and dealing on own account would be treated as a professional client for other types of investment services or activities for which the eligible counterparty category is not applicable.