

# ESMA\_QA\_2791

Status: Question Rejected

## **Additional Information**

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### **Level 1 Regulation**

Directive 2014/65/EU - Markets in Financial Instruments Directive (MiFID II)

### **Level 2 Regulation**

Regulation 2017/565 - MiFID II Delegated Regulation

### **Level 3 Regulation**

ESMA/2015/1886 - Guidelines - Assessment of knowledge and competence (MiFID)

### **Topic**

Suitability

### **Historic Question Reference**

follow-up to ESMA email ref. 26-0343 + Submitted Question (ESMA\_QA\_2790)

### **Additional Legal Reference**

ESMA Guidelines ESMA/2015/1886 (rev.), paras. 4(j), 19, 20(c)-(g); MiFID II (Directive 2014/65/EU), Art. 16(2) and 16(6), Art. 25(1), Art. 25(2), 25(6) and 25(9); Commission Delegated Regulation (EU) 2017/565, Art. 54 and Art. 72.

## **Subject Matter**

Records / audit trail / digital workflows / use of user credentials / Record-keeping and audit trail for “under supervision” in digital/segregated advisory workflows

## **Question**

I would like to request a general clarification on the interpretation of the ESMA Guidelines ESMA/2015/1886 (rev.) regarding record-keeping requirements for “under supervision” (in particular paragraphs 19, 20(c) and 20(g)).

In practice, client communication, suitability documentation and system completion are often performed in a segregated and digital manner (e.g. different staff members involved in the client interaction, documentation and approval). This raises, in particular, the following questions:

### **1. Minimum requirements for records / traceability**

What minimum requirements arise from the Guidelines regarding records to enable the competent authority to verify that supervision actually takes place and is carried out to an appropriate extent?

### **2. Objective evidence of assumption of responsibility**

Is the mere formal naming of a qualified person in the documentation (e.g. in the suitability statement) sufficient, or do the Guidelines expect objectively verifiable review/approval/sign-off evidence?

### **3. Digital processes / segregated documentation**

What requirements apply in digital systems and segregated documentation workflows where client communication, suitability documentation and system completion are not carried out by the same person?

### **4. Use of user credentials / role awareness**

How should “under supervision” be assessed under the Guidelines if user credentials of a qualified person are used for system documentation/system completion, but that person does not provide a conscious assumption of responsibility (review/approval/sign-off) or is not aware that they are intended to act as the supervisor?