

ESMA_QA_2799

Status: Question Rejected

Additional Information

Level 1 Regulation

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

Level 2 Regulation

Regulation 2017/565 - MiFID II Delegated Regulation

Topic

Suitability

Additional Legal Reference

MiFID II 2014/65/EU (Art. 16, 25); Reg. (EU) 2017/565 (Art. 54); ESMA/2015/1886 (rev.) (paras 4(j), 19, 20(d)-(g)).

Subject Matter

Attribution of investment advice in split or system-supported workflows (personal recommendation vs suitability statement)

Question

In practice, investment firms may apply “tandem” or split workflows where one staff member conducts the client meeting, gathers the client’s circumstances and communicates/explains a concrete course of action to the client, while another staff member and/or a partly automated system performs the suitability assessment, approval and/or generates/transmits the suitability statement.

Against this background, could ESMA clarify, under MiFID II and relevant Level-2 measures, the EU-law criteria for determining whether the staff member who leads the client interaction and explains the recommendation is already providing investment advice, or whether that activity can be regarded as acting under supervision?

In particular:

1. For the attribution of investment advice, is the decisive element who communicates the personal recommendation to the client, rather than who technically generates/approves/transmits the suitability statement?

2. In split workflows, what organisational minimum features are expected to evidence “under supervision” (e.g. explicit assignment of the supervisory role, timely intervention capability, documented review/approval/sign-off), where the supervised staff member communicates the personal recommendation?