ESMA_QA_2800

Submission Date
10/03/2026

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); Deleg. Reg. (EU) 2017/565 (Art. 54; record-keeping).

Subject Matter
Personal recommendation and suitability statement: documentation nature and staff attribution in split/automated processes

Question

Under MiFID II, investment advice is defined as a personal recommendation to a client in relation to transactions in financial instruments. In practice, the personal recommendation, the suitability assessment, the documentation and the technical generation/transmission of the suitability statement may be performed by different persons and/or partly automated systems.

Could ESMA clarify the following points:

1. For determining whether and by whom investment advice was provided, is it primarily relevant who gave/communicated the personal recommendation to the client, rather than who merely prepared/generated/transmitted the suitability statement through IT systems?

2. Should the suitability statement under MiFID II / Delegated Regulation (EU) 2017/565 be understood as documentation and rationale of a recommendation that has already been made, rather than as a constitutive element of “investment advice”?

3. Is it necessary, for the attribution of investment advice to a specific staff member, that the same staff member is technically able to create/approve/transmit the suitability statement, or can these steps be separated without changing the attribution of who “advised”?