

Regulatory news alert

MiFID II

21 December 2017

Key elements of 18 December ESMA Q&A

Background

On the 18 December, ESMA released a new version of its Q&A on Investor Protection. Among the list of questions there are two themes that require the greatest attention.

1. What is the status of asset management for UCITS or AIF delegated to MIFID firms regarding the treatment of inducements
2. What rules are applicable to MIFID Firms:
 - a. Providing MIFID II services in Member States where MIFID II is not transposed;
 - b. Providing MIFID II services via branches in Member States where MIFID II is transposed;
 - c. Attitude of supervisory authorities in Member States where MIFID II is transposed vis-à-vis MIFID firms still under MIFID I in their Member State of origin.

Analysis

Question 1. ESMA considers that in general the provision of asset management services for UCITS and AIF is not subject to the inducements regulation, the term in general might mean that it is not always the case, ESMA refers among other consideration to the Conflict of Interests concept and to the “measures that aim to circumvent” the regulation.

Questions 2. ESMA reminds that MIFID II, with MIFIR, are the new rules of the game across the EU from 3 January 2018. However, ESMA recalls that MIFID II is a construction that builds on MIFID I requirements, these remains applicable in the Member States that will not meet the 3 January deadline until MIFID II transposition. This approach would preserve in the Member State concerned the level playing field. It does not prevent MIFID firms to comply to MIFID II, which is more precise and granular than MIFID I and it does not contradict.

However, when MIFID firms are willing to offer under LPS (free provision of service) or via branches from MIFID I Member States to MIFID II Member States, the rules might be more complex. MIFID firms need to ensure that the host



authority will accept their presence and that as the case might be, the local branch is complying with MIFID II or equivalent rules. In practice, the host authority can block firms that are not MIFID II compliant regardless of the rules in their home jurisdiction.

These Q&A are de facto a way for ESMA to confirm the application of MIFID II and MIFIR across the EU.

How can Deloitte help?

Deloitte RegWatch Team actively monitors MiFID II developments and other regulation subsequent publications on an ongoing basis with and could help you analyze the impact of regulations on your activity and strategy.

Deloitte can help your firm in the implementation of solutions and regulations for MIFID II or other regulations, we offer to organize workshop in your offices, analyze your current solution and help your firm migrate to the desired state. The project could be technical, strategic, focused on optimization of the present structure.

Please do not hesitate to contact us, we would be more than happy to identify and set up the solution tailored to your requirements.

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