

ESMA reminds firms of the MiFID II rules on reverse solicitation

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, is issuing a [Public Statement](#) to remind firms of the MiFID II requirements on the provision of investment services to retail or professional clients by firms not established or situated in the European Union (EU).

With the end of the UK transition period on 31 December 2020, some questionable practices by firms around reverse solicitation, where the product or service is marketed at the client's own exclusive initiative, have emerged. For example, some firms appear to be trying to circumvent MiFID II requirements by including general clauses in their Terms of Business or through the use of online pop-up "I agree" boxes whereby clients state that any transaction is executed on the exclusive initiative of the client.

ESMA reminds firms that "where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client". This is true "regardless of any contractual clause or disclaimer purporting to state, for example, that the third country firm will be deemed to respond to the exclusive initiative of the client".

ESMA would also like to highlight that:

- the provision of investment services in the EU without proper authorisation in accordance with the EU and the national law applicable in Member States exposes service providers to the risk of administrative or criminal proceedings, for the application of relevant sanctions; and
- when using the services of investment service providers which are not properly authorised in accordance with EU and Member States' law, investors may lose protections granted to them under EU relevant rules, including coverage under the investor compensation schemes in accordance with Directive 97/9/EC.