

EU Regulator Warning on Post-Brexit Financial Services EU Access Exemptions

The European Securities and Markets Association ("ESMA") has published a statement¹ on reverse solicitation of clients by third country firms following Brexit and the end of the UK transition period on 31 December 2020.

It has identified what it calls "*questionable practices*" by firms in this regard, for example, using general clauses or online pop-up "*I agree*" boxes in terms and conditions requiring clients to agree that services are provided at the exclusive initiative of the client. Notably ESMA highlights recital 111 of MiFID II which states "*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*".

ESMA also reminds firms that when determining what constitutes solicitation, promotion or advertising in the EU, all communication means used (such as press releases; advertising on the internet; brochures; phone calls or face-to-face meetings) should be considered. Also those communications should be examined regardless of the person through whom such communications are issued: whether it is the firm itself, or a person acting on its behalf or with close links to the firm.

ESMA's statement aligns with our previous advice to clients on the narrow scope of this exemption, particularly where it relates to services being provided to retail clients.

Impacted firms will need to consider this statement, together with the general prohibition against holding oneself out as an investment firm without having the necessary authorisation, and

review their practices to ensure that they do not contravene MiFID II requirements.

The Financial Services Regulatory team at Maples Group, Dublin can guide UK (or other third country) firms on the scope of the MiFID regime and various options to consider relating to the provision of investment services to clients and products based in Ireland.

Further Information

If you would like further information, please liaise with your usual Maples Group contact or:

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¹ <https://www.esma.europa.eu/press-news/esma-news/esma-reminds-firms-mifid-ii-rules-reverse-solicitation>