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Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014- Secondary Markets

Topic
Multilateral and bilateral systems

Subject Matter
Multilateral and bilateral systems - Member preferencing functionalities and pre-arranged transactions

Question
Can member preferencing functionalities be used to formalise pre-arranged transactions?

ESMA Answer

05-12-2019

Original language

[ESMA 70-872942901-38 MiFID II MiFIR market structures Q&A, Q&A 5.9a]

MiFID II requires trading venues to use transparent rules and procedures providing for fair and orderly trading and to establish objective criteria for the efficient execution of orders (Articles 19(1) and 47(1)(d) of MiFID II). ESMA considers that trading venues may implement/offer member preferencing functionalities in the trading system they operate as long as those functionalities comply with the MiFID II requirements and in particular are transparent and available to all members or participants.

However, ESMA also considers that member preferencing functionalities cannot be used to formalise pre-arranged transactions. Trading venues should monitor the use of member preferencing on any type of trading system and establish arrangements and procedures to detect attempts to use member preferencing functionalities to formalise privately negotiated trades. Should trading venues detect such use of member preferencing functionalities, they should have appropriate means in place to ensure that those trading patterns are discontinued.

ESMA reminds market participants that pre-arranged transactions may only be formalised on a trading venue when that trading venue benefits from an appropriate pre-trade transparency waiver.