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Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic
Multilateral and bilateral systems

Subject Matter
Market making agreement for payment received from a trading venue

Question
Would any payment received from a trading venue in respect of market making activity or liquidity provision require the conclusion of a market making agreement?

ESMA Answer

04-10-2018

Original language

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

No. The purpose of the requirement in Article 48 is to ensure that any party receiving financial incentives, such as rebates, to provide liquidity on a trading venue is subject to appropriate market making obligations, but these need not always take the form of a market making agreement as specified in RTS 8.

A “rebate” in this context should be read to include negative fees or direct payments to the provider of liquidity as well as to refunds or discounts on fees due from the provider of liquidity to the trading venue. It follows from this interpretation that “maker/taker schemes”, whereby financial incentives are provided to market participants to conclude trades by posting passive orders, are not only allowed for firms required to enter into in a market making agreement in accordance with Article 17(4) of MiFID II but also for other market makers covered by Article 4(1)(7) of MiFID II provided that these are subject to the appropriate market making obligations.