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Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Inducements

Additional Legal Reference
Article 39a

Subject Matter
Payment for order flow (PFOF) prohibition and OTC execution of client orders

Question

Does the prohibition of receiving payment for order flow (PFOF) apply to situations where the order is not executed on a trading venue, for instance for products traded over the counter (OTC)?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

The scope of application of Article 39a of MiFIR should be considered taking into account the core policy objectives of MiFIR, including:
(a) investor protection;
(b) execution of orders in the best interest of clients.
Since those objectives support the broadest possible coverage of execution venues, the prohibition should be understood as applying not only to transactions executed on a trading venue, but also to transactions executed over the counter (OTC).

That interpretation would also be consistent with the definition of an “execution venue” set out in Article 64(1), second subparagraph, of Commission Delegated Regulation (EU) 2017/565.[1]

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(1) Execution venue’ includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.” (Article 64(1) Commission Delegated Regulation (EU) 2017/565).

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