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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, Paragraph 1

Subject Matter
Payment for order flow (PFOF) prohibition: scope for rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail clients or opt-in professional clients

Question
Which type of rebates or discounts on transaction fees or any other benefits for investment firms acting on behalf of retail clients or opt-in professional clients are out of the scope of the prohibition to receive payment for order flow specified in Article 39a MiFIR?

ESMA Answer

03-03-2026

Original language

Answer provided by the European Commission

According to Article 39a (1), second subparagraph of MiFIR, rebates or discounts on the transaction fees of execution venues, which are permitted under the approved and public tariff structure of a trading venue in the Union or of a third-country trading venue, which exclusively benefit the client, and which do not result in a monetary benefit to the investment firm, are out-of-the scope of the prohibition to receive PFOF. Those tariff structures should however comply with Article 5 of Commission Delegated Regulation (EU) 2017/573, which sets out requirements to ensure fair and non-discriminatory fee structures[2].

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(2) Trading venues shall not offer their members, participants or clients a fee structure whereby, once their trades exceed a given threshold, all of their trades benefit from a lower fee for a set period, including those trades that were executed prior to reaching that threshold." Article 5 of Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structure".

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