PRESS RELEASE

Council of the EU is the Last Hurdle to Tackling Conflicts of Interests in Retail Investment Services

17 November 2022 – The struggle against conflicts of interests and to deliver an adequate, high level of "retail" investor protection now hinges on the positions of representatives of the EU Member States (Council of the EU). BETTER FINANCE firmly advises the co-legislator not to hamper EU progress and to support the proposal to ban "kickbacks" that are detrimental to "retail" investors.

On the 24th of October, BETTER FINANCE heartily congratulated EU parliamentary groups for taking a strong stance on conflicts of interest in retail investment services by proposing an outright ban on sales commissions for investment firms when dealing with "retail" clients (press release here).

The Council of the EU, composed of representatives of the Member States, is the last remaining obstacle standing in the way of this prohibition becoming EU law.

Worryingly a "non-paper" from the Presidency of the Council not only shamelessly ignores a straightforward ban, but actually aims to institutionalise a detrimental practice for "retail" investors (*payment for order flows, or PFOF*), in spite of strong evidence produced by national supervisors indicating its harmful nature.[1] This is why the European Commission and the European Parliament Rapporteur proposed to ban PFOF.

In particular, proposals to lower the "best execution" standard by reducing it to a "give or take" margin on a very limited reference price[2] whilst paving the way for non-transparent venues to capture "retail" orders – affecting liquidity and price formation – would significantly weaken the current "retail" investor protection framework.

Instead, and in case an outright ban remains politically unpalatable to some Member States, BETTER FINANCE advised EU authorities to consider:

- ensuring adequate, fair, clear, not misleading, and **publicly available** reporting on commissions received by retail brokers from "dark" operators,
- prohibiting systematic internalisers from dealing and executing trades that are below the "large-in-scale" size (compared to the standard market size),
- imposing an **adequate definition** for best execution primarily as obtaining the best price, net of commissions and other costs, for retail trades; additionally, the broker should further demonstrate how the commission improved execution for the "retail" investor,
- requiring brokers dealing with "retail" clients to offer at least one "lit" (RM/MTF) trading venue (new Amendments 3c and 10c on Art. 27) MiFID II).

Guillaume Prache, Managing Director at BETTER FINANCE, highlighted that "*there is a strong will from EU authorities to improve the retail investor protection framework, address conflicts of interests and ensure bias-free advice. The political momentum is here, we just hope it will not be blocked by Governments opposing EU integration to protect national industry players*".

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Contact: Chief Communications Officer | Arnaud Houdmont | +32 (0)2 514 37 77 | houdmont@betterfinance.eu

[1] See AFM Paper here and CNMV here.
[2] A 2% margin of error in relation to the European Best Bid and Offer (EBBO) produced by a Consolidated Tape Provider (CTP) aggregating data that does not include systematic internalisers, which make up for a very large part of equity trading in the EU.

For more information, see BETTER FINANCE's:

- Press Release: BETTER FINANCE Applauds and Supports Proposed Ban on Sales Commissions Paid to Retail Distributors of Investment Products (24 October 2022)
- BETTER FINANCE Position Paper: Transparency and Best Execution for Retail Traders and Investors (May 2022)
- *Evidence Paper on the Detrimental Effects of Inducements* (February 2022)