

MEMO# 33926

November 30, 2021

ESMA Consultation on MiFID II Best Execution Reports

[33926]

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TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
Global Advocacy Coordination Advisory Committee
Global EU Capital Markets Union Task Force
Global Operations Advisory Committee
Global Regulated Funds Committee RE: ESMA Consultation on MiFID II Best Execution Reports

On 24 September 2021, the European Securities and Markets Authority (ESMA) published a consultation paper^[1] ("CP") on the best execution reports that execution venues and investment firms are required to publish under MiFID II. ESMA is accepting comments on the CP by 23 December 2021 via a response form^[2] submitted online.^[3] ICI Global intends to submit a response to the CP. A draft of ICI Global's response will be circulated to members for comment.

Background

MiFID II^[4] imposes best execution obligations on investment firms^[5] and requires execution venues and investment firms to publish the following reports on the quality of execution:

- Execution venues are required to publish data on the quality of execution on a quarterly basis.^[6]
- Investment firms are required to summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained.^[7]

The European Commission ("the Commission") has adopted Regulatory Technical Standards (RTS) specifying the content and format of the reports required from execution venues (known as "RTS 27" reports)^[8] and investment firms (known as "RTS 28" reports).^[9] The Commission received the following feedback^[10] on these reports from its MiFID II/R consultation last year,^[11] to which ICI Global responded:^[12]

- The majority of respondents disagreed with the statement that the best execution reports are of sufficiently good quality to provide investors with useful information.
- Respondents suggested the deletion of RTS27 reports by execution venues as they are very difficult to understand, often more than 40 pages and do not allow for meaningful conclusions as best execution is established on a trade-by-trade and client-by-client basis.
- Respondents noted that RTS 27 reports are not comparable across different investment firms as information is reported in an inconsistent way (firms have interpreted certain requirements differently).
- Respondents were slightly more positive on the RTS 28 reports as they enabled investment firms to provide some further information on their execution strategy but were of the general view that Transaction Cost Analysis (TCA) reports are the primary source of information used by clients to monitor best execution in the equities markets.

ESMA notes in the CP that it has become aware of shortcomings in RTS 27 reports, and to a lesser extent RTS 28 reports through stakeholder engagement. ESMA has published Q&As on RTS 27 and RTS 28 reports.[\[13\]](#) At the start of the COVID 19 pandemic, ESMA issued a public statement recommending that NCAs take account of potential difficulties for execution venues and investment firms to publish RTS 27 and RTS 28 reports.[\[14\]](#)

The so-called "MiFID Quick Fix",[\[15\]](#) adopted under the Capital Markets Recovery Package in response to the COVID-19 pandemic, contained the following provisions related RTS 27 and RTS 28 reports:

- A provision suspending the requirement for execution venues to produce RTS 27 reports until 28 February 2023;[\[16\]](#) and
- A requirement for the Commission to submit a report to the European Parliament and the Council by 28 February 2022 on the adequacy of the RTS 27 and RTS 28 rules.[\[17\]](#)

ESMA has issued the CP to provide input into its examination of the shortcomings of RTS 27 and RTS 28 reports, including supporting the Commission in its review of the adequacy of the best execution reporting framework. On 25 November 2021, the Commission published proposals for the revision of MiFID/R,[\[18\]](#) including to remove obstacles which the Commission believes have prevented the emergence of a consolidated tape.[\[19\]](#) The Commission suggests that if, as it intends, the consolidated tape contains comprehensive post-trade information then as that information can be used for providing best execution, the requirement for execution venues to produce RTS 27 reports should be deleted.[\[20\]](#)

Consultation Paper

ESMA recalls the overarching purpose of the RTS 27 and RTS 28 regimes. ESMA highlights the objective of RTS 27 reports to provide firms and the public with relevant data related to the execution quality achieved on venues, to help them determine the best way to execute client orders. ESMA notes that RTS 27 reports can foster competition between venues for trading volume, which may lead to an improved quality of execution for investors.

ESMA highlights that RTS 28 reports are intended to enable the public and investors to evaluate the quality of an investment firm's execution activities, for example, by allowing to compare the firm's execution practices, also in light of its execution policy. Furthermore, ESMA notes that RTS 28 reports also aim to support investors and the public in choosing the most suitable firm for the execution of their orders and in achieving better investment

results.

Issues related to existing reports

ESMA has sought feedback from national competent authorities (NCAs) on the implementation of the RTS 27 and RTS 28 reporting requirements. ESMA notes that NCAs generally observed that RTS 27 reports only provided a limited contribution to the promotion of best execution.

ESMA highlights the following feedback from NCAs in relation to RTS 28 reports:

- Limited use of RTS 28 reports, especially among retail investors, stemming from difficulties in accessing the reports.
- Potential benefits of RTS 28 reporting including increased transparency of firms' execution practices, which may foster their execution quality.
- Some 'bad practices' in firms' provision of RTS 28 reports, especially data quality problems (e.g., incompleteness of data) in the 'execution quality' section, which can complicate the assessment and comparison of this information by market participants.
- A few 'good practices' of RTS 28 reporting, e.g., some firms provided specifically detailed qualitative information for each asset class, which may facilitate market participants' understanding of those firms' efforts to achieve best execution; and
- Lack of clarity on how firms providing the services of reception and transmission of orders ("RTO"), and portfolio managers that transmit for execution a decision to deal, should report under the current RTS 28.

ESMA notes that NCAs made proposals to improve firms' provision of RTS 28 reports including the following:

- clarifying that firms receiving and transmitting orders should also publish RTS 28 reports; and
- facilitating access to RTS 28 information for retail investors, for example, via data formats which are easy to handle.

ESMA's Reform Proposals for RTS 27 Reports

In the CP, ESMA sets out its proposals for reforming RTS 27 reports produced by execution venues. ESMA notes the broad and detailed range of information that is currently required in these reports. ESMA outlines its proposals for a new RTS 27 regime under which a more limited set of indicators would be reported to provide the public and market participants with a focused overview of the execution quality achieved by venues. Through its proposals, ESMA is seeking to simplify the reporting requirements for execution venues along the following lines:

- transforming the detailed, raw data-oriented reporting obligations of the existing RTS 27 reports into requirements resulting in the disclosure of seven core metrics to provide information of higher added value on venues' execution quality.
- reducing the granularity of reporting of information, for instance whereas the existing RTS 27 regime obliges venues to report for each market segment they operate and each financial instrument, a future regime could require reporting per type of financial instrument (e.g., shares considered to have a liquid market).
- avoiding overlaps and ensuring consistency with the post-trade transparency reporting requirements under MiFID II/MiFIR; and
- accounting for the envisaged establishment of a consolidated tape (CT) under the

MiFID II framework.

ESMA considers that enhancing the user-friendliness of the data in RTS 27 reports - by requiring venues to report indicators rather than raw data - would enable market participants to gain a swift overview of venues' achieved execution quality.

ESMA proposes to change the scope of RTS 27 reporting requirements by focusing on: (i) transactions executed on trading venues; and (ii) OTC transactions where a systematic internaliser or another liquidity provider is a part to the transaction. ESMA also proposes that for "non-anonymous trading systems", the trading venue should disclose the identity of market makers in RTS 27 reports and a breakdown of information per market maker as to its contribution to the execution quality of the trading venue. Under ESMA's proposals, market makers would be excluded from the scope of the new RTS 27 reporting regime. ESMA considers that its proposed change in scope will allow investors to obtain best execution information more easily compared to having to obtain different reports from a number of different market makers. ESMA asks for feedback on its proposals (Q1, CP).

ESMA proposes a less granular approach to RTS 27 reports and sets out the way in which equity instruments and non-equity instruments would be aggregated by type. ESMA asks for feedback on its proposals, including splitting out shares into two categories depending on whether they are considered to have a liquid market (Q2, CP).

ESMA proposes the following seven indicators of execution quality that would be included in revised RTS 27 reports:

- The total nominal or monetary value of all transactions per type of financial instrument executed by the venue in the previous quarter of the year.
- The median monetary transaction value per type of financial instrument in the previous quarter of the year.
- The costs for a median transaction during the previous reporting period.
- The bid-offer spread related to the median transaction of the previous quarter of the year.
- Additional information on costs, including relevant fees or charges and taking into account rebates or discounts offered to some or all users, for instance via a link to a website or other information source.
- The speed of execution; and
- The total number of market makers designed by the venue per type of financial instrument.

ESMA asks for feedback on the proposed metrics outlined above for RTS 27 reports (Q3).

ESMA suggests that in order to streamline RTS 27 reporting by trading venues, core elements of the reporting methodology could be aligned with MiFID II/MiFIR, including the content and format of fields and the typology of fields in RTS 1[21] and RTS 2.[22] ESMA highlights its ongoing review of RTS 1 and RTS 2, including its proposals to modify the list of trading systems. ESMA also proposes the following measures to facilitate better access to RTS 27 reports:

- specifying the structure of the file to be published, to avoid data that is split across a series of smaller files.
- using machine-readable formats such as CSV; and
- shortening the period for venue's publication of RTS 27 reports to one month after the end of each quarter.

ESMA asks for input on good or bad practices which are relevant for determining how to enhance the accessibility and user-friendliness of RTS 27 reports (Q4).

Annex III - Letter A of the CP contains draft RTS of ESMA's proposals for a revised RTS 27 reporting regime.^[23] The annex to this memo contains the 18 fields that ESMA is proposing will be published in revised RTS 27 reports.

ESMA's Reform Proposals for RTS 28 Reports

In the CP,^[24] ESMA sets out its proposals for reforming RTS 28 reports produced by investment firms. ESMA recalls that under the existing regime investment firms, such as brokers, are required to publish an annual report on the execution quality, including the following:

- their top five execution venues in terms of trading volumes for all executed client orders; and
- a summary of their achieved execution quality (per class of financial instruments respectively).

ESMA also recalls similar obligations apply to investment firms which do not execute client orders but instead transmit these orders to third parties for execution.^[25] ESMA notes that while this requirement shares the same objectives as RTS 28, it is generic and therefore hinders comparisons to be made across firms. ESMA therefore proposes a revised RTS 28 reporting regime for firms which do not execute themselves client orders or decisions to deal, but instead transmit them to third parties for execution. Under this revised regime, investment firms would be required to disclose separate top five tables in terms of trading volumes for executed orders or decisions to deal, as well as for orders or decisions to deal which those firms transmitted to third party entities for execution. ESMA suggests that the revised regime could be introduced by amending Article 27(6) of MIFID II, to clarify that the reporting requirements also apply to firms that provide RTO services and to portfolio managers that transmit decisions to deal for execution.

ESMA also proposes amending a range of individual reporting requirements of the current RTS 28 reporting regime to make the content of those reports more meaningful for the public and market participants. ESMA proposes the following changes:

- The deletion of firms' obligation to report as part of the top five list, the percentage of the executed orders that were passive and aggressive orders, as this information seemed to have provided only little added value in revealing firms' execution quality.
- The new obligation for firms to explicitly confirm in their summaries of execution quality, if they do not report on the required parameters (e.g., the explanation of the relative importance the firm gave to the execution factors of inter alia, price, costs and speed) and to briefly explain why they did not provide this information.
- The inclusion of information on received payments for order flow in the summary on the firms' achieved execution quality (e.g., the average amount per financial instrument of payments for order flow which the firm received from each of the top five venues) to assist investors in the choice of a firm for their order execution.

To facilitate access to RTS 28 reports for the public and market participants, ESMA suggests requiring firms to publish the reports in a machine-readable electronic format and in a CSV format.

ESMA proposes that investment firms which transmit client orders or place decisions to deal

for execution to a third-party entity shall publish the top five third party executing entities in terms of trading volumes per class of financial instruments.[\[26\]](#) ESMA specifies various classes of financial instruments, including the following sub-classification of equities (i.e., shares and depositary receipts)[\[27\]](#):

- Tick size liquidity bands 5 and 6 (from 2000 trades per day)
- Tick size liquidity bands 3 and 4 (from 80 to 1 999 trades per day)
- Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)

ESMA also proposes a prescribed format for publication[\[28\]](#) and, furthermore, that investment firms will differentiate between retail and professional clients when reporting information.

Annex III - Letter B of the CP contains draft RTS of ESMA's proposals for a revised RTS 28 reporting regime.[\[29\]](#)

ESMA asks for input on the following:

- Good or bad practices which are relevant for determining how to enhance the accessibility and user-friendliness of RTS 28 reports (Q5).
- Feedback on ESMA's proposed revisions to the RTS 28 reporting regime (Q7), including its suggested methodology for reporting on equity instruments including alternative categorisations which could be used (Q6).

ESMA also asks for input on its cost benefit analysis (Q8)[\[30\]](#) and any additional comments or information that respondents to the CP want to provide (Q9).

Existing ICI Global Position on reforms to RTS 28 reports

In response to the Commission's 2020 consultation on a review of the MiFID II/MiFIR regulatory framework,[\[31\]](#) ICI Global recommended various enhancements to RTS 28 reports to achieve greater consistency and facilitate easier comparison analysis through standardisation and more evenly balanced "big picture" and granular data disclosures. More specifically, we highlighted anecdotal feedback from members that suggests they have received limited feedback or queries from investors on RTS 27 and RTS 28 reports. Furthermore, we recalled the considerable setup costs incurred by members to develop a framework for producing RTS 28 reports and the ongoing resources required to produce periodic reports.

We generally highlighted the challenges associated with providing an informative picture of execution in a single report, as ultimately best execution will be determined on a trade-by-trade basis and the relative importance of factors will differ client-by-client. Furthermore, as the data and format used for presentation varies, this makes comparison analysis more complex. We noted that ICI Global members report almost no feedback from retail investors on the RTS 28 reports. We also noted that professional investors monitoring execution rely on significantly more data than would be reasonable to include in public RTS 28 reports alongside other data such as existing cost and charges reporting.

Next Steps

ESMA is accepting comments on the CP by 23 December 2021 via a response form submitted online. ESMA will consider the responses it receives to the CP in Q4 2021 and plans to send proposals to the European Commission, if needed, in the first half of 2022.

The European Commission has been asked to submit a report to the European Parliament and the Council by 28 February 2022 on the adequacy of the RTS 27 and RTS 28 rule.

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endnotes

[1] ESMA Consultation Paper: Review of the MiFID II framework on best execution reports, 24 September 2021, *available from* https://www.esma.europa.eu/sites/default/files/library/esma35-43-2836_cp_-_best_execution_reports.pdf

[2] https://www.esma.europa.eu/system/files_force/library/response_form_consultation_paper_review_of_mifid_ii_framework_on_best_execution_reports.docx?download=1

[3] <https://www.esma.europa.eu/press-news/consultations/consultation-review-mifid-ii-framework-best-execution-reports>

[4] Article 27, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("MiFID II"), *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

[5] Article 27(1), MiFID II

[6] Article 27(3) requires publication on at least an annual basis, but Article 11, RTS 27 further specified requirements for quarterly publication.

[7] Article 27(6)

[8] Commission Delegated Regulation (EU) 2017/575 of 8 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 concerning the data to be published by execution venues on the quality of execution of transactions ("RTS 27"), *available from* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.087.01.0152.01.ENG

[9] Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution ("RTS 28"), *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0576>

[10] Summary Report of the Public Consultation on the Review of MiFID II/MiFIR by the European Commission, 20 October 2021, *available from* <https://ec.europa.eu/info/law/better-regulation/>

[11] European Commission Public Consultation on the Review of the MiFID II/MiFIR regulatory framework, *available from* https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en

[12] Section 6, page 34, ICI Global Response to European Commission Public Consultation on the Review of the MiFID/MiFIR Regulatory Framework ("ICI Global MiFID CP Response"), *available from* <https://www.ici.org/system/files/attachments/pdf/mifidresponse.pdf>

[13] Section 1, ESMA Question and Answers on MiFID II and MiFIR investor protection and intermediaries topics, 19 November 2021, *available from* https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

[14] ESMA Press Release: ESMA Provides Clarifications for Best Execution Reports under MiFID II, 31 March 2020, *available from* <https://www.esma.europa.eu/press-news/esma-news/esma-provides-clarifications-best-execution-reports-under-mifid-ii>

[15] Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis ("MiFID Quick Fix"), *available from* <https://eur-lex.europa.eu/eli/dir/2021/338>

[16] Article 27(3) MiFID II addendum, MiFID II Quick Fix

[17] Article 27(6) MiFID II addendum, MiFID II Quick Fix

[18] European Commission Communication: Capital markets union, Commission adopts package to ensure better data access and revamped investment rules, 25 November 2021, *available from* https://ec.europa.eu/info/publications/211125-capital-markets-union-package_en

[19] https://ec.europa.eu/finance/docs/law/211125-proposal-consolidated-tape_en.pdf

[20] Recital 7, Proposal for a directive amending Directive 2014/65/EU on markets in financial instruments, *available from* https://ec.europa.eu/finance/docs/law/211125-proposal-mifir_en.pdf

[21] Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser, *available from* https://eur-lex.europa.eu/eli/reg_del/2017/587/oj

[22] Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0583>

[\[23\]](#) The RTS would sit under Article 27(10)(a), MiFID II.

[\[24\]](#) CP at 51

[\[25\]](#) Article 65(6), MiFID II Delegation Regulation

[\[26\]](#) Article 4, Proposed RTS in Annex III - Letter B of the CP

[\[27\]](#) Annex I, Proposed RTS in Annex III - Letter B, CP

[\[28\]](#) Annex II, Proposed RTS in Annex III - Letter B, CP

[\[29\]](#) The RTS would sit under Article 27(10)(b), MiFID II.

[\[30\]](#) Annex II, CP

[\[31\]](#) ICI Global MiFID CP Response

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