

MEMO# 33936

December 6, 2021

ESMA Consultation on MiFID II Best Execution Reports: ICI Global Draft Response for Comment by 14 December

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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: ICI Global Draft Response for Comment by 14 December

As previously advised,[\[1\]](#) on 24 September 2021 the European Securities and Markets Authority (ESMA) published a consultation paper ("CP") on the best execution reports that execution venues and investment firms are required to publish under MiFID II. ICI Global's draft response to the CP is attached. We are seeking member input on the draft response by close of business on Tuesday 14 December to enable ICI Global to submit its response to ESMA by the deadline of Thursday 23 December 2021. A summary of ICI Global's draft response is below.

Draft Response

In our draft response to the CP, we underscore our support for the policy objectives of RTS 27/28 reports but recommend the adoption of radically different approach to providing firms and investors with data on execution quality. We noted that we do not consider that either the current reporting regime or ESMA's proposed reforms provide firms or investors with the right information on execution quality. We recommend that the RTS 27 and RTS 28 reporting requirements are deleted and replaced with the following measures:

- A comprehensive and thoughtfully implemented consolidated tape, including comprehensive post-trade data, which is supported by the development of an underlying typology and standardised technical specifications;[\[2\]](#)
- A new obligation on execution venues to report on their management of any conflicts of interest which potentially impair their ability to provide best execution (e.g., use of internal trading systems to fulfil orders etc.); and

- A new obligation on investment firms to make available to investors a high-level description of their approach to best execution, produced in a format which the firm considers provides investors with useful information and drawing as relevant on the typology and specification developed to support a European consolidated tape.

We are seeking member input on our draft response, including our proposal for replacing the current RTS 27 and RTS 28 regime with new obligations on execution venues and investment firms. We welcome member feedback on whether we should advocate for the deletion of RTS 27 and RTS 28 reports without proposing any alternative obligations on firms, in line with the approach of the UK Financial Conduct Authority.^[3]

Next Steps

We are seeking input on the draft response by close of business on Tuesday 14 December. We will submit our response to ESMA by 23 December 2021 deadline. 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] ICI Memorandum No. 33926, RE: ESMA Consultation on MiFID II Best Execution Reports, dated 30 November 2021, *available from* <https://www.ici.org/memo33926>

^[2] ICI Global has provided its detailed recommendations on establishing a consolidated tape in its responses to ESMA and the European Commission, *available at* <https://www.ici.org/files/2021/esmamifid.pdf> and <https://www.ici.org/system/files/attachments/pdf/mifidresponse.pdf>

^[3] Financial Conduct Authority Policy Statement: Changes to UK MiFID's Conduct and Organisational Requirements, dated November 2021, *available from* <https://www.fca.org.uk/publication/policy/ps21-20.pdf>