European Securities and Markets Authority

Response form for the Consultation Paper on Review of the MiFID II framework on best execution reports

30 September 2021

Date: 30 September 2021

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

- respond to the question stated and indicate the specific question to which they relate;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Thursday 23th December 2021.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the steps below when preparing and submitting their response:

- Insert your responses to the consultation questions in this form.
- Please do not remove tags of the type <ESMA_QUESTION_BEEX_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_BEEX_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_BEEX_ABCD_RESPONSEFORM.
- Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading 'Your input – Open consultations' → 'Consultation on Review of the MiFID II framework on best execution reports').

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this paper?

This document is of interest to execution venues, investment firms and their associations, investors, consumer associations, as well as any market participant engaged in the execution of orders under the MiFID II framework.

General information about respondent

Name of the company / organisation	European Banking Federation
Activity	Other
Are you representing an association?	☒
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_BEEX_1>
The European Banking Federation (EBF) welcomes the ESMA consultation on RTS27 and 28 under MIFID, as well as the EC legislative proposal dated 25th November 2021 to delete RTS 27 reporting.
The EBF considers that the RTS 27 and RTS 28 reports provide very little added value to investors. Our members' preferred solution is therefore to abolish these reporting requirements permanently from the level 1 text. **We therefore fully support COMs recent proposal and consider that the temporary exemption introduced by MiFID Quick Fix is extended until the European Parliament and Council have adopted the MiFIR Review changes and they have been applied.**
According to the experiences of our members with respect to RTS 27 and RTS 28 report we see that these reports are seldom used by clients. Therefore, the information in the said reports are not used at all by the target audience of the report (investors). We take the view that – based on our experiences – there is no demand on the investors' side for such reports. We would add that the content of the reports is not fit for the purpose at all (the reposts are too complex).
If the reports are kept, the EBF considers that it is very important to simplify the rules, to limit the scope of the reports and to make certain clarifications in order to increase legal certainty. Indeed, any amendments to best execution reporting rules require IT changes that are costly and administrative burdensome to implement. **It is therefore important to focus on changes that can be clearly justified from a cost/benefit perspective.** Changes in the form of deletion or limitation of requirements are generally less burdensome compared to detailed amendments (as it would be in this case).
Remaining under the hypothesis that the reports are kept, the EBF fully support ESMA's proposal to limit the scope of RTS 27 to liquid bonds and to delete the [passive/aggressive] field. We do not however support that the rules should continue to be applicable to "other liquidity providers". A preferred solution would be to limit the reporting requirements in RTS 27 to trading venues and SIs only.
IT changes as well as adjustments to internal routines and procedures make it very important to be provided with sufficiently **long implementation period**. In addition, it is very important to avoid the creation of a "gap" between the expiration of the temporary exemption introduced by MiFID Quick Fix and the implementation of the amended RTS 27 and 28. The EBF therefore proposes that the temporary exemption is extended until any amended rule starts to apply.
We would like to draw ESMA's attention to the classes of financial instruments in Annex I in RTS 28. The classification does not work today since there is a degree of subjective discretion when

determining which class a specific instrument belongs to, which reduces the level of comparison between different reports published according to RTS 28.
Finally, the EBF deems appropriate to underline the importance to continue working on data quality improvement, in order to make the reports useful.<ESMA_COMMENT_ BEEX_1>

Q1 : Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?

<ESMA_QUESTION_BEEX_1>

The proposed changes to RTS 27 are seen significantly overlapping with the already reported data according to the requirements under RTS 2 and RTS 22. The amendments' proposal to RTS 27 would translate into developing a new reporting, requiring developments and operational costs that are not proportionate with the other transparency reporting done. Additionally, the transparency regime is also supported by the transparency reporting required daily via APAs (RTS 2 and 22). Hence, we propose that the RTS 27 should be permanently paused. This is supported by the fact that according to the download history mentioned by our members of the Reports produced by the Execution Venues, the RTS27 reports are used seldom.
In more general terms, we strongly support the publication and transparency from investment firms but believe that trimming the reporting obligation into just one would be more optimal, especially taking into account the fact that RTS27 already overlaps with RTS2 and RTS 22. It is also important to notice that investment firms operating as SI reports data as SI (venue) to a large extend and execution quality (RTS28) based on same raw data. This means, investment firms which are operating as an execution venue, has two reporting standards. This is seen as an administrative burden and not proportionate compared to the data already provided.
Furthermore, if we welcome the proposal to exclude market makers from the scope of the new reporting regime, then we believe that also "other liquidity providers" should be excluded from the definition of execution venues for the specific purposes of the best execution reporting regime applicable to execution venues, given that their provision of liquidity may be carried out also in the absence of formal agreements with a venue (as also recognized by ESMA: see Q&A on "MiFID II and MiFIR investor protection and intermediaries' topics", Best Execution-Question n. 18 "What constitutes 'other liquidity provider' under Recital 7 of RTS 27?" dated 25 May 2018). Otherwise, should the "liquidity providers" be kept in scope for the definition of execution venues, then we would strongly encourage ESMA to qualify a liquidity provider, since the current definition does not work in practice. However,we urge ESMA to avoid a duplication of the SI regime in order not to complicate the SI regime further. It seems to us that best execution reporting for other liquidity provider seems to be mainly relevant for CFDs (page 14, section 34).
EBF Members believe a new more limited scope is good, but there is still a lot of data that needs to be compiled and think 3 months should be kept for producing the report and not shorten it to one month.
We do not agree that reports shall be published via a planned EU Single Access Point (ESAP) according to Article 5 (3) of RTS 27 (new). This is an additional administrative burden which is not proportionate to the questionable benefits the reports have for the recipients.
<ESMA_QUESTION_BEEX_1>

Q2 : Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? In particular, do you agree with the two proposed categories concerning shares (i.e., shares considered to have a liquid market and shares not considered to have a liquid market)? If not,

please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.

<ESMA_QUESTION_BEEX_2>

EBF supports the proposed level of granularity.
We are of the opinion that derivates and other non-equity instruments in general should be excluded from the RTS 27, and not only derivatives determined not to have a liquid market and not subject to the derivatives trading obligation and non-equity derivatives with no liquid market.
We welcome the narrowing of the scope for liquid instruments and illiquid instruments. However, this requires that the data quality is improved considerably.
We also want to highlight the main problem to solve is which financial instrument has a liquid market. In our opinion, under the current regime, there are doubts in the interpretation of the post-trade SSTI and LIS limits for bonds published every year. It is not known from when they apply, whether the dates refer to the date on which we publish the report or the period for which we publish the data. This issue in the new system should be resolved in a way that helps to avoid ambiguities and allows for easy retrieval of relevant information. Otherwise, we can encounter a situation where each entity will report in a non-different way and comparing reports on the market will still be very difficult.
<ESMA_QUESTION_BEEX_2>

Q3 : Do you agree with the proposed metrics to report the execution quality obtained by execution venues?

<ESMA_QUESTION_BEEX_3>

First of all, we would like to refer to our introductory comments where we suggest the permanent deletion of RTS 27 reports. As it goes for the data in the proposed new metrics, we are of the opinion that such data would not provide useful information indicators of best execution.
Should the RTS27 Report not be abolished (given the legislative steps in the Parliament and the Council of the recent COMM proposal), then we acknowledge that the proposed seven metrics would represent a significant simplification. We do however believe some points need further clarification and specification since they seem complicated to be translated in practice.
Something that should help the market to use those reports is to further specify the structure of the file to be published and specifies the level of granularity of each report, to avoid that files are broken down into a series of smaller files. Important issue is also publishing obligation report in CSV format. For today there are many types of files used to publish those information.
Having said this, We doubt over the effectiveness of the so-called "median transaction" metric. Indeed, so far, the necessary data in order to easily determine the parameters of such a “median transaction” is not stored in the corresponding systems of the institutions.. However with regards to non-equity instruments, such publication of data would be much more complex and, in the context of derivatives outright meaningless. As a result, the institutions would have a very high cost for no or little gain in knowledge for the market.

With regard to costs, we would like to note that these vary depending on client category. This is to stress the point that there is no “median transaction” that provides meaningful information for all market participants. In addition, retail clients receive a cost statement in the PRIIPs KID; for wholesale clients, the cost statement was in many cases abolished in the MiFID Quick Fix for good reason. It is therefore neither necessary nor in line with recent developments to provide cost information via best ex reporting.

As already said, a calculated median is not very meaningful for an individual customer. This is also of no help to an asset manager, who needs to know the individual price available to him and not average data. In addition, we would like to point out to ESMA that systematic internalisers cannot be equated with trading venues such as regulated markets, MTFs or OTFs. Systematic internalisers - unlike trading venues - have different client groups, for each of which different conditions apply.

Coming to the bid-offer spread and its recording, it must be taken into account that such spread(s) changes *de facto* every second when it comes to systematic internalisers. Recording of the bid-offer spread, it is hardly feasible on a technical level and implies a disproportionate effort: every second there is a new price with a new bid-offer spread and therefore, the average is to be calculated. In addition, customers are generally only interested in “their” relevant side, not the bid-offer spread.

As far as the "further information on costs" is concerned, we would like to point out that this is not feasible for derivatives. Corresponding statements are only possible for bonds and equity instruments. However, the disclosure of costs in the best execution reporting contradicts the facilitations recently made in the MiFID Quick Fix.

As for the calculation of the speed of execution for a median monetary transaction size, it is deemed not feasible for systematic internalisers. As a result of all this, other systematic internalisers will (have to) withdraw from the market, adding to the descending trend in the number of Sis active in the Union, leaving clients with no choice.

<ESMA_QUESTION_BEEX_3>

Q4 : Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

<ESMA_QUESTION_BEEX_4>

EBF supports easy and equal access for the users to the RTS 27 reports, and it supports the proposal to align the reporting with existing reporting standards under MiFID II/MiFIR. This due to the fact that the current reports from venues are very difficult to interpret statistically and therefore almost impossible to compare. Also, the download history of RTS 27 reports shows that they are very seldom used, which indicates that the format and consumption of the data is not working as intended.

We would also like to point out that different handlings of the previous requirements by different trading venues due to various market models had made comparability in detail and thus the possibilities of use very difficult.
<ESMA_QUESTION_BEEX_4>

Q5 : Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.
<ESMA_QUESTION_BEEX_5>

No response

<ESMA_QUESTION_BEEX_5>

Q6 : Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?
<ESMA_QUESTION_BEEX_6>

EBF sees some challenges with the classes of financial instruments as defined in Annex I, which are the same classes as we have in the RTS 28 today. The classes are not sufficiently precise which leads to a subjective assessment for some instruments. Hence it is difficult to compare the reports published by different firms. Therefore, we encourage ESMA to revisit Annex I to ensure that the classification of instruments are done on an objective basis going forward. A mapping based on CFI could be a solution.
<ESMA_QUESTION_BEEX_6>

Q7 : Do you agree with the proposals for a possible review of RTS 28?
<ESMA_QUESTION_BEEX_7>

We understand that the crucial question for RTS 28 requirements is on whether such report should be preserved. Based on the evidence we gathered so far, we do not deem that they provide meaningful information able to justifies the efforts and resources required in producing them, as they are currently drafted (in compliance with the legislation currently in force). We could not observe any significant use by customers and therefore consider the market relevance of the reports very low. Relevance of the RTS 28 reports is apparently for regulatory purposes only. Some of our members consider that modifications to the RTS 28 reports will not significantly change this outcome. As the UK (FCA) will delete RTS 27/28 (https://www.fca.org.uk/publication/policy/ps21-20.pdf), we believe that there will be a serious competitive disadvantage for EU institutions if this obligation is maintained.
In case the RTS 28 report requirement would be maintained, we agree that the obligation to list the percentage of aggressive and passive orders should be deleted. With regard to the extended disclosure requirements for PFOF, however, we see only very limited informative value for an

individual customer. We also welcome that the liquidity bands would not have to be reported any more since we did not see that this information was useful for potential recipients of the report. On the split between retail/professional clients, EBF is of the opinion that either not introduce the split or leave it unchanged as it is today. It seems that the amount of work required to complete the new information is still far too much in relation to the interest in this data on the market - taking into account the current regulations.
Furthermore, we would like to point out, that a certain form of consistency in the data bases between RTS 27 and RTS 28 is of crucial important for using RTS 27 report data as input for RTS 28 reports.
<ESMA_QUESTION_BEEX_7>

Q8 : Do you agree with the cost benefit analysis as it has been described in Annex II?
<ESMA_QUESTION_BEEX_8>

Even though venues and firms already today provide reports in accordance with RTS 27 and RTS 28, the new reporting obligation as proposed in the consultation paper would not require negligible costs given the development of the new reporting set-up and, especially the proposed revision of RTS 27 report will require a lot of development. For this reason, it is very important that its application is well-thought through. We also see some challenges with the deadline set for 2023. If on the one hand the steps towards greater uniformity of these reports over the long term should have a positive impact on the costs incurred by investment firms, on the other hand we don't think the analysis fully takes into account the costs for introducing changes or amendments. It should also be clearer how low the benefit is for clients because of how seldom the reports are downloaded or looked at.
<ESMA_QUESTION_BEEX_8>

Q9 : Are there any additional comments that you would like to raise and/or information that you would like to provide?
<ESMA_QUESTION_BEEX_9>

No response

<ESMA_QUESTION_BEEX_9>