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

European Securities and Markets Authority

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. <u>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</u>. 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	ICMA
Activity	Other
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_BEEX_1>
On behalf of the International Capital Market Association (ICMA), we are pleased to provide feedback regarding ESMA's consultation paper on "Review of the MiFID II framework on best execution reports (RTS 27 and RTS 28)". ICMA's MiFID II Working Group best execution taskforce (Taskforce) is grateful for the opportunity to respond to ESMA's consultation paper.

The ICMA Taskforce member response is based on consensus view from a varied group of buy-side and sell-side investment firms, representing Netherlands, Germany, France, Sweden, Spain, Italy, UK, Australia, and the United States. There is a unique value in conveying broad view from across the industry and we hope this response is informative and useful.

Taskforce members welcome the efforts of ESMA to seek out stakeholder views concerning ESMA's conclusions and proposals regarding the application of MiFID II best execution reports. **This response is solely in relation to cash bonds.**

ICMA's response below will outline its recommendations regarding RTS 27 and RTS 28. To summarise, ICMA recommends that ESMA should delete both RTS 27 and RTS 28. These reports have not been useful for industry participants and furthermore, they do not reflect bond market participant execution quality analysis practices e.g. venues versus OTC dealers.

Most of ICMA's members operate in both the EU and UK. Recently, the FCA published stats on the Wholesale Market Review (WMR) which was carried out earlier this year by UK HMT. These RTS 27 and RTS 28 stats reflect present views of ICMA members when considering EU markets as well as UK and the Taskforce agrees with the FCA's findings. See FCA's WMR findings below:

"*RTS 27 reports* *(3.3) There were 34 respondents to the question inviting comment on deletion of RTS 27 reports. All but 1 favoured removal of these reports. Of these, 1 trade body said that fund management firms use alternative means to assess the quality of the executions obtained, as the data provided by RTS 27 is too fragmented and hard to decipher, while not being the information that firms want. Another trade body said the reports had not reached their intended policy goal. (3.4) A couple of respondents made further comments. A trade body agreed with the proposed removal of RTS 27 reports but considered the original policy intention to be worthwhile. Accordingly, they suggested RTS 27 be replaced with a more effective new regime that is designed to provide useful information to market participants. They cited equivalent reports in the US (the SEC Rule 605 reports) as an example that provides market participants with actual transparency on execution quality in a relevant, standardised, centralised and consistent manner. A further trade body highlighted that members with operations in both the UK and EU would only see significant costs savings where removal took effect in both jurisdictions."*

"*RTS 28 reports* *(3.5) All but one of the 34 respondents to the question inviting comment on deletion of RTS 28 reports were supportive of the proposal. Of these,1 trade body noted client interest in reports being negligible with alternative, better means available for portfolio managers using brokers to execute their orders to assess trade execution. This view was shared by another trade body which noted that alternative transaction cost analysis solutions are evolving that enable firms to support a wider evaluation and assess* *their counterparties and performance in a more uniform way, while providing an additional level of transparency for investors. (3.6) The only trade body to disagree suggested the FCA could redesign the reporting requirements for firms about their order routing and execution outcomes to ensure these reports are insightful and highlight particular points where there are likely to be conflicts of interest. They suggested this should include a quicker turnaround and reporting frequency, mandating a specific format and making the reports machine-readable in a proscribed format. A different trade body suggested the FCA should consider issuing a statement of supervisory flexibility similar to those issued by the FCA for RTS 27 reports and notifications of 10% drops in the values of portfolios. This would be to take account of any work that firms would otherwise need to undertake in the interim prior to the next RTS 28 reports being due in April 2022 and finalisation of any rule changes."*

The FCA announced, as of 1 December 2021, PS21/20: Changes to UK MiFID's conduct and organisational requirements:

- "*From 1 December 2021 (today), firms will no longer be required to prepare RTS 27 and RTS 28 reports in the UK. These are the obligations on execution venues and firms to make public information on execution quality and order routing*".

ICMA's EU member Taskforce fully supports this FCA rationale and ruling and recommends to ESMA to come to the same conclusion, after reviewing this ICMA response on best execution reporting. ESMA agreeing also to no longer require investment firms to prepare RTS 27 and RTS 28 best execution reports will level the playing field in regard to best execution.
<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>

ICMA disagrees with the proposed scope for execution venues regarding limiting the scope of reporting to seven key metrics for execution quality. This is because ICMA agrees with EU Commission's proposed amending text, published 25 November 2021, to delete Article 27 (3):

"Article 27(3) of Directive 2014/65/EU contains the requirement for execution platforms to publish a list of details relating to best execution. Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports. As a consequence, Directive (EU) 2021/338 of the European Parliament and of the Council21 suspended the reporting requirement for two years in order for that requirement to be reviewed. Regulation (EU) XX/XXXX22 has amended Regulation (EU) 600/2014 to remove the obstacles that have prevented the emergence of a consolidated tape. Among the data that the consolidated tape is expected to provide are post-trade information regarding all transactions in financial instruments. That information can be used for proving best execution. ***The reporting requirement laid down in Article 27(3) of Directive 2014/65/EU will therefore no longer be relevant and should therefore be deleted."***

ICMA considers RTS 27 should be deleted in its entirety.

<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>

ICMA believes this question to relate mostly to shares. However, in regard to bonds and "*granularity of types of financial instruments"*, ICMA agrees with the EU Commission proposal that RTS 27 is no longer relevant and should be deleted. As such, ICMA disagrees with all proposals in question 2.

<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>

ICMA disagrees with the proposed metrics to report the execution quality obtained by execution venues. This is because ICMA agrees with EU Commission's proposed amending text, published 25 November 2021, to delete Article 27 (3):

"Article 27(3) of Directive 2014/65/EU contains the requirement for execution platforms to publish a list of details relating to best execution. Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports. As a consequence, Directive (EU) 2021/338 of the European Parliament and of the Council21 suspended the reporting requirement for two years in order for that requirement to be reviewed. Regulation (EU) XX/XXXX22 has amended Regulation (EU) 600/2014 to remove the obstacles that have prevented the emergence of a consolidated tape. Among the data that the consolidated tape is expected to provide are post-trade information regarding all transactions in financial instruments. That information can be used for proving best execution. ***The reporting requirement laid down in Article 27(3) of Directive 2014/65/EU will therefore no longer be relevant and should therefore be deleted."***

ICMA considers RTS 27 should be deleted in its entirety.

<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>

The aim of the data generated from the RTS 27 reports was to provide market participants, regulators and the public useful information to analyse in order to create value and assist market functioning. However, ICMA buy-side members agree there has been almost no interest in the data generated by the RTS 27 report. This is because portfolio managers and traders have better methods to assess execution quality. For example, broker reviews and TCA.

Therefore, the question of 'good or bad' practices is irrelevant. ICMA understands the industry uses other means [often more useful and therefore more cost effective] to get this information. As such, **ICMA recommends ESMA delete RTS 27 in its entirety, as recommended by EU Commission.**

<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>

The aim of the data generated from the RTS 28 report was to provide market participants, regulators and the public useful information to analyse in order to create value and assist market functioning. However, ICMA buy-side members agree there has been almost no interest in the data generated by the report. This is because portfolio managers and traders have better methods to assess execution quality. For example, broker reviews and TCA.

Therefore, the question of 'good or bad' practices is irrelevant. ICMA understands the industry uses other means [often more useful and therefore more cost effective] to get this information. As such, **ICMA recommends ESMA delete RTS 28 in its entirety.**

<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>

ICMA disagrees with the classification for reporting of bonds as proposed in Annex 1 relating to RTS 28. This is because ICMA believes RTS 28 should be deleted in its entirety. ICMA understands there are better methods of getting this information which are more cost effective and useful to buy-side bond market participants.

<ESMA_QUESTION_BEEX_6>

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

<ESMA_QUESTION_BEEX_7>

ICMA disagrees with the proposals referenced in Annex III. However, ICMA notes in Annex III, there are not formal proposals for new RTSs. Instead, question 7 refers to suggestions for possible ways to modify the current RTS 28 (and RTS 27) legal framework, including level 1.

As mentioned in previous answers, the EU Commission has proposed deleting RTS 27. ICMA agrees with this proposal. As stated previously, ICMA goes further to recommend deleting RTS 28.

ICMA agrees with FCA's findings mentioned earlier, illustrating there are better means available for portfolio managers, using brokers and TCA to assess their trade execution quality. *"Alternative transaction cost analysis solutions are evolving that enable firms to support a wider evaluation and assess their counterparties and performance in a more uniform way, while providing an additional level of transparency for investors."* As such, **RTS 28 reports are of no value.**

It is ICMA's recommendation to ESMA that they delete RTS 28.

<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>

In May 2020, ICMA responded to EU Commission's consultation on MiFID II/R review https://www.icma-group.org/Regulatory-Policy-and-Market-Practice/Secondary-Markets/secondary-markets-regulation/mifid-ii-r/ . In that response, ICMA analysed the cost benefits of the RTS 27 and RTS 28 reports. Ultimately, this analysis has led to ICMA's agreement with the EU's proposal to delete RTS 27 and why ICMA further recommends to ESMA that RTS 28 should also be deleted. Please see the following extracts:

*"**(57.1)** Buy-sides and sell-sides agree market participants are not benefitting from these best execution reports. Therefore, in relation to benefits, the time, money and effort that has gone into the producing these reports is not balanced.*

From a buyside perspective, the aim of the data generated from the RTS 28 report was to provide market participants, regulators, end-investors and the public with useful information to analyse in order to create value and assist market functioning. However, ICMA buy-side members agree there has been almost no interest in the data generated by the report by any of these parties.

Best Execution estimated reporting costs for per average firm:
• RTS 28 buy-side build costs: EUR 100k - 300k
• RTS 28 running costs per annum: EUR 20k – 50k

From a sell-side perspective, the format structure of RTS 27 relates more to equities asset class than bonds.

Best Execution estimated reporting costs for per average firm:
• RTS 27 sell-side build costs: EUR 800k - 1.2 mln
• RTS 27 sell-side running costs per annum: EUR 5k to 10K "

Even if the RTS 28 and RTS 27 reports were reduced to seven metrics, these reports would still not reflect bond market execution quality. Also, increasing the speed of production of reports would add to the burden and increase the costs side of the cost/benefits analysis equation.

ICMA recommends to ESMA to delete both RTS 27 and RTS 28 in their entireties.

<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>

ICMA again maintains ESMA should strongly consider deleting both RTS 27 (in agreement with the European Commission) and RTS 28 in order to optimise bond market functioning by making bond execution analysis more streamlined and cost effective for participants on a day – to- day basis. This will ultimately benefit all EU bond market participants and level the playing field for all concerned.

<ESMA_QUESTION_BEEX_9>