ESMA_QA_1036

Submission Date
04/04/2017

Status: Answer Published

Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Topic
Best Execution

Subject Matter
Best Execution

Question
How soon after MiFID II comes into effect will venues and firms have to publish RTS 27 and 28 reports?

ESMA Answer

04-04-2017

Original language

[ESMA35-43-349 MiFIDII Investor Protection Best execution 6]

The data venues are required to collect and publish under RTS 27 are tied to several provisions stemming from MiFID II and MiFIR, such as the ‘Size Specific to The Instrument’ (SSTI) thresholds under the transparency regime and the transaction reporting requirements. ESMA therefore considers that the first report published under RTS 27 should cover a reporting period that is representative of the first quarter of 2018 and should be published by 30 June 2018.

The information that firms will be required to publish under RTS 28 is of a different nature. Along with the report on the top five venues where they have executed their client orders, it requires a summary of the outcomes achieved by firms when executing those orders. As best execution is not a new requirement under MiFID II, firms should already have implemented most of the necessary arrangements to conduct this analysis.

Therefore, ESMA considers that firms should release the first annual report (covering a full calendar year period) under RTS 28 by the end of the fourth month of the calendar year during which the legislation enters into force (i.e. April 2018). However, ESMA recognises that for the first set of RTS 28 reports, investment firms may not be able to fully report on information which is not available or applicable in relation to the preceding year e.g. where it is tied to new provisions stemming from MiFID II or MiFIR.

As a practical matter, this might mean that the first year’s report may lack some of the detail that would be available for subsequent reports, given that firms may not have data published under RTS 27 for the preceding year. Specifically, ESMA wishes to clarify that unless the firm is using a specific tool or the services of a third party data provider to assess execution quality, it will most likely be unable to provide, in the first annual report, any information required under Article 3(3)(g) of RTS 28. Another possible example of where the first set reports required by RTS 28 may lack some granularity in comparison to subsequent reports

is in relation to the lack of data on the identification of the subclasses of the classes of financial instruments based on liquidity, in accordance with the MiFID II tick size regime. Similarly, investment firms may not necessarily have complete information on the exact proportion of passive and aggressive orders executed on each of the execution venues it used in the previous year, since they may not have been collecting such detailed information under their existing MiFID I best execution obligations.

Nonetheless, information on the top five venues and a summary of the outcomes achieved, such as it is in line with investment firms' MiFID I best execution obligations, will still provide useful information to investors.