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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

When an investment firm operates an OTF, at which level should the best execution policy be set? At the level of the investment firm or at the level of the OTF or both? Would similar requirements apply to a market operator operating an OTF?

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Original language

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Where an investment firm operates an OTF, ESMA is of the view that the investment firm's best execution policy should cover how orders are executed both at the level of the investment firm and at the level of the OTF and, in particular, how discretion is exercised at each stage.

Firstly, an investment firm operating an OTF should, in the same way as other investment firms that execute client orders, have a firm-level execution policy setting out the various execution venues, including its own OTF, that it will be considering when receiving a client order and explain in which circumstances an execution venue would prevail over the others.

Secondly, the investment firm should have either a separate policy or an additional section in the firm-level execution policy governing how, when a client order is then sent to the OTF, the best possible result for the client is achieved taking into account the trading interests in the system and the different execution mechanisms that may be available on the OTF, such as voice execution, electronic RFQ or order book.

As the exercise of discretion by the investment firm in its OTF operator capacity is to be in compliance with its execution policy, the document should also set out in detail, the area(s) in which the OTF operator intends to exercise discretion and the basis on which such discretion will be exercised (Article 20(6) of MiFID II).

Equivalent requirements apply to a market operator operating an OTF. In this regard, a market operator would need to have a best execution policy in place, setting out the conditions under which an order received by a client may be executed on its OTF, as described above.