ESMA_QA_1054

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 should passive and aggressive orders be understood in the context of portfolio management or of reception and transmission of orders for the purposes of the RTS 28 report to be published under Article 65(6) of the Delegated Regulation?

ESMA Answer

04-04-2017

Original language

[ESMA35-43-439 MiFID II Investor Protection Best execution Q&A 14]

Investment firms providing portfolio management or reception and transmission of orders services are required to publish information that is consistent with the RTS 28 which includes, among others, data on passive and aggressive orders. The relevance of these descriptive terms in the context of portfolio managers will however vary according to the nature of the activities undertaken, the trading system used and the classes of financial instruments. If a portfolio manager, or a receiver and transmitter of orders, sends an order to an entity for execution (broker), the distinction between passive and aggressive orders as defined in Article 2 of RTS 28 is likely not relevant and will not need to be disclosed in the report to be published in accordance with Article 65(6) of the Delegated Regulation.

An exception to this is where the portfolio manager or transmitter of orders has attached a specific instruction to an order, and that instruction is understood to mean that the broker will execute the order in a fashion that is either passive or aggressive within the meaning of the definition provided under RTS 28.

If a portfolio manager is executing orders directly on an execution venue then Article 27 of MiFID II and RTS 28 apply and the distinction between passive and aggressive will be relevant and should be disclosed in the report, where applicable.