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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
Should an investment firm using direct electronic access (DEA) services provided by an intermediary firm (such as a broker) list the execution venue selected via the DEA arrangement (under the RTS 28 reporting obligation), or the broker providing the DEA service (under the report to be published under Article 65(6) of the Delegated Regulation)?

ESMA Answer

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Original language

[ESMA35-43-439 MiFID II Investor protection Best execution Q&A 17]

Article 4(1)(41) of MiFID II defines DEA as arrangements where a member or participant or client of a trading venue permits a person to use its trading code. ESMA considers that the provider of DEA is the firm executing orders. As such, an investment firm using DEA services to specifically direct an order to a particular venue would be expected to list the intermediary firm providing that service for the purposes of the report to be published under Article 65(6) of the Delegated Regulation (which is consistent with the RTS 28 report). In these instances, the investment firm would be considered as giving a specific instruction to the intermediary providing DEA regarding the choice of the execution venue. Correspondingly, the intermediary providing DEA service would still have an obligation to include trades executed via such access arrangements in its RTS 28 reports, although these trades could be classified as “directed orders” given the venue on which orders are executed is specified by the client (as set out in Article 2(c) of RTS 28). This differs from a situation where the intermediating broker retains discretion over some parameters of the execution of the order, particularly, the venue destination, including where a broker’s smart order router determines where an order is executed.

While transactions are intermediated by the broker providing the DEA service, ESMA also recognises that the objective of the report to be published under Article 65(6) of the Delegated Regulation is to help clients understand the execution practices of investment firms transmitting or placing orders via DEA services and directing the choice of execution venues (as outlined above), and this objective is best served by the provision of information about the execution venues orders are routed to (where the investment firm is exercising discretion over the choice of execution venue). In order to ensure that the report provides a complete picture of the investment firm’s order routing arrangements, ESMA considers that the investment firms should also disclose the identity of the main venues it commonly selects via DEA arrangements and the existence of any close links and specific arrangements with such execution venues, in its summary of execution quality (which, as required by Article

65(6), must be consistent with the information to be provided in accordance with Article 3(3) of RTS 28).