

## PUBLIC STATEMENT

### **Deprioritisation of supervisory actions on the obligation to publish RTS 27 reports after 28 February 2023 in light of the ongoing legislative procedure on the MiFID II/MiFIR review**

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote coordinated action by National Competent Authorities (NCAs) in the context of the temporary suspension of the obligation on execution venues in Article 27(3) of MiFID II<sup>1</sup>, set out, as part of the so-called EU Recovery package, by the MiFID II amending Directive<sup>2</sup>. This Public Statement is issued in accordance with Article 31 of the ESMA Regulation<sup>3</sup>.

Article 27(3) of MiFID II requires execution venues to make available to the public reports related to the quality of execution of transactions on their venues. The so-called RTS 27<sup>4</sup> further specifies the content and format of these reports (RTS 27 reports). According to the amending Directive, RTS 27 reports are rarely read and do not enable investors and other users to make meaningful comparisons on the basis of the information they contain. As a consequence, the amending Directive sets out a temporary suspension of the periodic reporting obligation to the public on execution venues in Article 27(3) of MiFID II until 28 February 2023.<sup>5</sup>

On 25 November 2021, the European Commission published its legislative proposal on the review of the Markets in Financial Instruments Regulation (MiFIR) and MiFID II<sup>6</sup>, which includes a proposal to delete the RTS 27 reporting obligation. This proposal is currently subject to a legislative procedure<sup>7</sup> by the Council of the European Union and the European Parliament. The public documents related to this procedure show that the draft report of the ECON

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>2</sup> See Article 1(6) of Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>4</sup> Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (OJ L 87, 31.3.2017, p. 152).

<sup>5</sup> See also the ESMA Public Statement on the application of the temporary suspension of the obligation to publish RTS 27 reports (Ref: ESMA35-43-2632).

<sup>6</sup> The co-legislators' negotiation on the MiFID II/MiFIR review is based on the European Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (Ref: 2021/0384 (COD)) and the European Commission's proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (Ref: 2021/0385 (COD)).

<sup>7</sup> Ordinary legislative procedure (Co-decision) according to Article 294 TFEU.

Committee of the European Parliament as well as the amendments tabled in Committee support the European Commission's proposal to abolish the RTS 27 reporting obligation.<sup>8</sup>

However, the legislative procedure is unlikely to be concluded by 28 February 2023 (i.e., by the expiration date of the temporary suspension of the RTS 27 reporting obligation).<sup>9</sup> In other words, it is likely that the RTS 27 reporting obligation will re-apply after 28 February 2023 and it is expected that such a re-application will be only temporary (until the reviewed MiFID II Directive would apply).<sup>10</sup> Additionally, the issues relating to RTS 27 reporting, as identified in the amending Directive, will still be applicable to any reports issued after 28 February 2023. ESMA acknowledges that a re-application of the RTS 27 reporting obligation after 28 February 2023 would require execution venues to deploy significant resources to restart and maintain the reporting, possibly for a short period, until its expected abolishment.

In light of the above, from 1 March 2023 until the forthcoming legislative amendment to Article 27(3) of MiFID II applies, ESMA expects NCAs not to prioritise supervisory actions towards execution venues relating to the periodic reporting obligation on them to publish the RTS 27 reports.

ESMA will monitor the legislative procedure relating to the MiFID II/MiFIR review and will update this public statement as necessary.

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<sup>8</sup> See Recital 7 and Article 1(4) of the European Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments; Amendments 11 and 13 of the European Parliament's ECON Committee Draft Report by Danuta Maria Huebner on the proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (Ref: 2021/0384(COD)) of 19 July 2022 (PE735.505) and Amendment 41 of the Amendments tabled in Committee of 20 October 2022 (PE737.327).

<sup>9</sup> This assessment on the potential duration of the co-decision procedure until its conclusion is based on the available information at the moment of this statement's publication.

<sup>10</sup> Under the assumption that the co-legislators would agree in the context of the MiFID II/MiFIR review to delete the RTS 27 reporting requirement.