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, set out, as part of the so-called EU Recovery package, by the MiFID II amending Directive. This Public Statement is issued in accordance with Article 31 of the ESMA Regulation.

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 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.

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, which includes a proposal to delete the RTS 27 reporting obligation. This proposal is currently subject to a legislative procedure 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...
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.⁸

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).⁹ 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).¹⁰ 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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⁹ 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.

¹⁰ 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.