Comments

Consultation Paper Review of the MiFID II framework on best execution reports

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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3 Annexes

3.1 Annex I

Summary of questions

Q1: Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?

We understand that the crucial question for RTS 27 reports is if these reports should be re-instated. Based on the evidence we have with these reports so far, we do not think that they provide meaningful information which justifies the efforts in producing these reports. Neither have these reports been widely used by prospective recipients so far (measured by observed page views) nor are they helpful for investment firm's own decisions to determine suitable best execution venues. We do not expect that the proposed modifications of RTS 27 reports would change that.

In this context, we very much welcome the fact that the EU-COM has proposed a deletion of Art. 27 (3) [RTS 27] as part of the Capital Markets Union package.

In case the RTS 27 reports would be re-instated in spite of the obvious questions regarding their usefulness, we propose that in addition to the deletion of market makers from the list of execution venues that are required to report under RTS 27, the "other liquidity provider" should be deleted. The latter is not involved in quotation to a significant extent. In addition, there still remain difficulties with definition of the "other liquidity provider" – regardless of guidance provided by ESMA in its Q&A 18 in the "Best execution" section of the "MiFID II and MiFIR investor protection and intermediaries topics".

Apparently, best ex reporting for other liquidity provider seems to be mainly relevant for CFDs (page 14, section 34). Therefore, as a fallback, only "other liquidity providers" providing liquidity in CSDs should be subject to the best execution reporting requirements.

We do not agree that reports shall be published via a planned EU Single Access Point (ESAP) according to Article 5 (3) of RTS 27 (new). This is an additional administrative burden which is not in proportion to the questionable benefit the report has for the recipients.

Q2: Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? In particular, do you agree with the two proposed categories concerning shares (i.e., shares considered to have a liquid market and shares not considered to have a liquid market)? If not, please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.

Yes. It makes sense to limit the best execution reporting requirements with regard to

- Equity instruments whether the instruments are considered to have a liquid market or not and to classify them according to the asset classes defined in RTS 2 (delegated regulation 2017/587) and
- Non-equity instruments to liquid instruments and to cluster according to the asset classes set forth in RTS 2 (delegated regulation 2017/583). In addition, the amendment contemplated for Art. 27(3) of the MiFID is consistent since the new approach no longer refers to a specific financial instruments but rather to an asset class.

Q3: Do you agree with the proposed metrics to report the execution quality obtained by execution venues?

We take a very critical view of the changes proposed in this section. It almost seems as if the market should be thinned out by raising the requirements for best ex reporting unnecessarily. Many of the requirements cannot be met by systematic internalisers, which will lead – in consequence – to their exclusion from the market. Overall, the complexity of the requirements and necessary corresponding implementation efforts (apart from the fact that in some cases implementation is factually impossible) are disproportionate to the benefits for the market.

We oppose the introduction of a so-called "median transaction". So far, the necessary data in order to easily determine the parameters of such a "median transaction" is not stored in the corresponding systems of the institutions. In addition, as regards equity instruments traded on a trading venue, there may be such a thing as a median transaction, the publication of which could lead to a knowledge gain for the market. However with regard to non-equity instruments, such publication of data would be much more complex and, in the context of derivatives outright meaningless. As a result, the institutions would have a very high cost for no or little gain in knowledge for the market.

With regard to costs, we would like to note that these vary per customer group. This stresses the point that there is no "median transaction" that provides meaningful information for all market participants. In addition, retail clients receive a cost statement in the PRIIPs KID; for wholesale clients, the cost statement was in many cases abolished in the MiFID Quick Fix for good reason. It is therefore neither necessary nor in line with recent developments to provide cost information via best ex reporting.

As already said, a calculated median is not very meaningful for an individual customer. This is also of no help to an asset manager, who needs to know the individual price available to him and not average data. In addition, we would like to point out to ESMA that systematic internalisers cannot be equated with trading venues such as regulated markets, MTFs or OTFs. Systematic internalisers – unlike trading venues – have different client groups, for each of which different conditions apply.

With regard to the bid-offer spread, it must be taken into account that this changes de facto every second with regard to systematic internalisers. Recording of the bid-offer spread it is technically hardly feasible and implies a disproportionate effort: every second there is a new price with a new bid-offer spread and therefrom, the average is to be calculated. In addition, customers are generally only interested in "their" relevant side, not the bid-offer spread.

With regard to "further information on costs", we would like to point out that this is not feasible for derivatives. Corresponding statements are only possible with regard to bonds and equity instruments. However, the disclosure of costs in the best execution reporting contradicts the facilitations recently made in the MiFID Quick Fix.

Also the calculation of the speed of execution for a median monetary transaction size is not feasible for systematic internalisers.

However, if the market should be thinned out deliberately, this would certainly be an appropriate method. As a result, many systematic internalisers will (have to) withdraw from the market, leaving clients with no choice. In fact, systematic internalisers will be driven out of the market.

Q4: Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

Already the deadline of three months is currently not feasible. Then – especially with the envisaged changes – a one-month deadline is cannot be complied with.

Not as good or bad practice but as general remark we would like to point out that different handlings of the previous requirements by different trading venues due to various market models had made comparability in detail and thus the possibilities of use very difficult.

Q5:Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

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Q6: Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?

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Q7: Do you agree with the proposals for a possible review of RTS 28?

We understand that the crucial question for RTS 28 reports is if this requirement should be maintained. Based on the evidence we have with these reports so far, we do not think that they provide meaningful information which justifies the efforts in producing these reports. We could not observe any significant use by customers and therefore consider the market relevance of the reports very low[1]. Relevance of the RTS 28 reports is apparently for regulatory purposes only. We do not think that modifications to the RTS 28 reports will significantly change this outcome. Therefore the RTS 28 reports should be abolished. As the UK (FCA) will delete RTS 27/28 (https://www.fca.org.uk/publication/policy/ps21-20.pdf), we believe that there will be a serious competitive disadvantage for EU institutions if this obligation is maintained.

In case the RTS 28 report requirement would be maintained, we agree that the obligation to list the percentage of aggressive and passive orders should be deleted. With regard to the extended disclosure requirements for PFOF, however, we see only very limited informative value for an individual customer. We also welcome that the liquidity bands would not have to be reported any more since we did not see that this information was useful for potential recipients of the report.

Q8: Do you agree with the cost benefit analysis as it has been described in Annex II?

We strongly object to the cost benefit analysis in Annex II. Given the fact that there are significant doubts that the RTS 27 and 28 reports provide meaningful information to the public and market participants justifying the costs to the industry in the EEA we believe ESMA should have considered abolishing the obligation to provide both reports altogether. It had already been decided as part of the MiFID II quick fix to suspend the RTS 27 obligation. With this background, we believe that any cost

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[1] We did a rough survey amongst our banks and were provided with the following data (accesses include both TOP 5 report as well as quality of execution report and it should be noted, that these accesses might not even be done by clients / private individuals but rather by professionals or eligible counterparties): Bank 1: 1000 clients – 10 accesses per year = **1%** / Bank 2: 1500 clients – 7 accesses per year = **0,47 %** / Bank 3: 8000 clients – 11 accesses per year = **0,14 %** / Bank 4: 25.000 clients – 4 access per year = **0,02 %.**

benefit analysis on future obligations has to discuss in detail the pros and cons of abolishing both reports. But the existing cost benefit analysis does not cover this important topic at all.

Q9: Are there any additional comments that you would like to raise and/or information that you would like to provide?

We are convinced that – as already expressed in the past – the best ex report will not be read by the investor, neither in the previous nor in the adjusted form. As the Commission rightly recognised, this is evidenced by very low numbers of downloads from website. It is therefore assumed that investors cannot or do not make any meaningful comparisons between firms on the basis of this data (recital (9) DIRECTIVE (EU) 2021/338). We therefore strongly advocate the abolition of best ex reporting.