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| 30 September 2021 |

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| Response form for the Consultation Paper on Review of the MiFID II framework on best execution reports |
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| Date: 30 September 2021 |

**Responding to this paper**

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

* respond to the question stated and indicate the specific question to which they relate;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Thursday 23th December 2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the steps below when preparing and submitting their response:

* Insert your responses to the consultation questions in this form.
* Please do not remove tags of the type <ESMA\_QUESTION\_BEEX\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_BEEX\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_BEEX\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ → ‘Consultation on Review of the MiFID II framework on best execution reports’).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This document is of interest to execution venues, investment firms and their associations, investors, consumer associations, as well as any market participant engaged in the execution of orders under the MiFID II framework.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | ICI Global |
| Activity | Asset Manager Association |
| Are you representing an association? |  |
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_BEEX\_1>

ICI Global[[1]](#footnote-2) welcomes the opportunity to respond to ESMA’s consultation[[2]](#footnote-3) on potential reforms to the best execution reports that are produced by execution venues (“RTS 27 reports”)[[3]](#footnote-4) and by investment firms, including investment managers (“RTS 28 reports”).[[4]](#footnote-5)

ICI Global members when managing the portfolios of UCITS “consume” the RTS 27 reports produced by execution venues and “produce” RTS 28 reports[[5]](#footnote-6) for the benefit of UCITS investors. We support the policy objectives of RTS 27/28 reports[[6]](#footnote-7) but do not consider that either the current reporting regime or ESMA’s proposed reforms provide firms or investors with the right information on execution quality. We recommend that the RTS 27 and RTS 28 reporting requirements be deleted and replaced with the following measures:

* A comprehensive and thoughtfully implemented consolidated tape, including comprehensive post-trade data, which is supported by the development of an underlying typology and standardised technical specifications;[[7]](#footnote-8) and
* A new obligation on execution venues to report on their management of any conflicts of interest that potentially impair their ability to provide best execution (e.g., use of internal trading systems to fulfil orders etc.).

We have set out below our more detailed comments on RTS 27 and RTS 28 reports.

**RTS 27 Reports**

ICI Global members, as consumers of RTS 27 data, do not find RTS 27 reports to provide timely or decision-useful information. Much of the data is out-of-date by the time of publication and can be hampered by data quality issues (e.g., inaccurate product costs, inconsistent timestamps etc.), reducing the reports’ usefulness and reliability. Furthermore, differences in the presentation, typology, format, and specification of data, coupled with incomplete data sets, create challenges for effective comparative analysis. Instead, ICI Global members use proprietary and third-party market data and tools to inform their view of market, liquidity, and execution quality, rather than data in RTS 27 reports.

The European Commission (“the Commission”) has published proposals to remove barriers to the emergence of a consolidated tape.[[8]](#footnote-9) The Commission envisages that a consolidated tape would provide post-trade information regarding all transactions in financial instruments that can be used for proving best execution. The Commission therefore considers that RTS 27 reports will no longer be relevant and should therefore be deleted. [[9]](#footnote-10) ICI Global fully supports the development of a comprehensive, thoughtfully implemented consolidated tape with fair pricing (i.e., transparent, cost-plus margin basis), high data quality, timely coverage and delivery, and appropriate governance. A comprehensive and thoughtfully implemented consolidated tape would enhance market transparency and provide a multitude of benefits to investors, including opportunities to enhance execution outcomes.

Given the limited utility of RTS 27 reports and the potential development of a consolidated tape containing post-trade data – which would likely make RTS 27 reports redundant – the requirement for execution venues to produce RTS 27 reports should be deleted. The RTS 27 reporting regime should be replaced with an obligation for execution venues to report on their management of any conflicts of interest that potentially could impair best execution (e.g., use of internal trading systems to fulfil orders.) Highlighting a venue’s conflicts of interest enables market participants to assess the effectiveness of the venue’s management and mitigation measures and supports market participants when discharging their own best execution obligations.

**RTS 28 Reports**

ICI Global members report that they receive limited feedback and queries from fund investors on RTS 28 reports. Fund investors take varying approaches to assessing best execution based on a range of factors, depending on the asset classes and markets to which they are exposed. Those fund investors that are most focused on trade execution typically examine information that is not contained in RTS 28 reports. For instance, ICI Global members receive requests concerning the expected trading costs associated with new investment strategies or the processing of large subscriptions or redemptions.

The nature of the current RTS 28 reporting regime – requiring asset managers to disclose the top 5 execution venues for each class of financial instrument – limits the utility of RTS 28 reports for fund investors. These limitations are partly due to the challenges in presenting an informative picture of execution in a single report. For instance, asset managers with multiple entities and trading desks around the world may move execution orders from one entity to another during their lifecycle because of time zone and other considerations. Passing of orders in this manner may result in one or more of the asset manager’s entities being listed in top 5 execution venues in RTS 28 reports. Furthermore, trades undertaken by an asset manager on behalf of all its clients – and not just funds – are aggregated for each class of financial instrument in RTS 28 reports. This presents challenges for fund investors to evaluate execution quality, particularly if the trading undertaken on behalf of their fund represents a relatively small component of the asset manager’s overall trading activity. It is questionable whether such information is useful to fund investors in assessing a firm’s approach to best execution.

RTS 28 reports may also be of limited utility to investors in multi-asset funds or a multi-manager funds. This is because an investor will need to look across multiple RTS 28 reports – produced for each class of financial instrument and each investment firm involved in the management of the fund’s portfolio – to obtain a comprehensive picture of execution. For instance, an investor in a multi-asset fund invested in five different classes of financial instrument and managed by five different managers would need to review 25 different RTS 28 reports to obtain a comprehensive picture of best execution.

Given the challenges of providing fund investors with an informative picture of execution quality in a single report, the requirement to produce RTS 28 reports should be deleted<ESMA\_COMMENT\_ BEEX\_1>

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

<ESMA\_QUESTION\_BEEX\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_1>

1. **: 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.**

<ESMA\_QUESTION\_BEEX\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_2>

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

<ESMA\_QUESTION\_BEEX\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_3>

1. **: 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.**

<ESMA\_QUESTION\_BEEX\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_4>

1. **: 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.**

<ESMA\_QUESTION\_BEEX\_5>

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<ESMA\_QUESTION\_BEEX\_5>

1. **: 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?**

<ESMA\_QUESTION\_BEEX\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_BEEX\_6>

1. **: Do you agree with the proposals for a possible review of RTS 28?**

<ESMA\_QUESTION\_BEEX\_7>

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<ESMA\_QUESTION\_BEEX\_7>

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

<ESMA\_QUESTION\_BEEX\_8>

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<ESMA\_QUESTION\_BEEX\_8>

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

<ESMA\_QUESTION\_BEEX\_9>

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<ESMA\_QUESTION\_BEEX\_9>

1. [ICI Global](https://www.ici.org/iciglobal) carries out the international work of the [Investment Company Institute](https://www.ici.org/), the leading association representing regulated funds globally. ICI’s membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of $42.6 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Brussels, Hong Kong, and Washington, DC. [↑](#footnote-ref-2)
2. ESMA Consultation Paper: Review of the MiFID II framework on best execution reports, 24 September 2021, available from <https://www.esma.europa.eu/sites/default/files/library/esma35-43-2836_cp_-_best_execution_reports.pdf> [↑](#footnote-ref-3)
3. In accordance with Article 27(3) of Directive 2014/65/EU (“MiFID II”) and Commission Delegated Regulation (EU) 2017/575 (“RTS 27”) [↑](#footnote-ref-4)
4. In accordance with Article 27(6) of MiFID II and Commission Delegated Regulation (EU) 2017/576 (“RTS 28”) [↑](#footnote-ref-5)
5. MiFID Investment firms undertaking portfolio management on a delegated basis for investment funds such as UCITS produce RTS 28 reports. [↑](#footnote-ref-6)
6. For instance, data to enable firms to determine the best way to execute orders and investors to evaluate and compare the quality of firms’ execution activities. [↑](#footnote-ref-7)
7. ICI Global has provided its detailed recommendations on establishing a consolidated tape in its responses to ESMA and the European Commission, available at <https://www.ici.org/files/2021/esmamifid.pdf> and <https://www.ici.org/system/files/attachments/pdf/mifidresponse.pdf> [↑](#footnote-ref-8)
8. European Commission Communication: Capital markets union, Commission adopts package to ensure better data access and revamped investment rules, 25 November 2021, available from <https://ec.europa.eu/info/publications/211125-capital-markets-union-package_en> [↑](#footnote-ref-9)
9. Recital 7, Proposal for a directive amending Directive 2014/65/EU on markets in financial instruments, available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0726> [↑](#footnote-ref-10)