Consultation Response

MiFIR Review – CP on Technical Standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies

Deadline: 16 October 2024

Executive Summary

As a general observation, while we recognise the legal obligation to develop draft Regulatory Technical Standards (RTS), it seems that some of the perceived shortcomings and areas for improvement outlined in section 18 of the Policy Background accompanying the draft RTS, may not be fully resolved by the current proposals, and could instead be addressed through supervisory or enforcement actions.

A more proportionate way to address the shortcomings ESMA has observed would be to codify existing available material, such as existing Level 2 rules (which can be found in different legal sources), into the new draft RTS. Where existing rules apply these should not be rephrased. These existing rules should be lifted and shifted into a draft RTS to ensure stable language and legal certainty. A consolidation exercise should also be carried out in relation to existing Q&As. Having all the relevant rules and guidance in a consolidated and cohesive format would facilitate ease of consumption for firms and, in turn, is likely to enhance compliance of the existing rules, which we argue continue to be fit for purpose.

We therefore urge ESMA to leverage the existing legal architecture to the greatest extent possible.

AFME members also state three overarching concerns with the proposed draft RTS:

- **Consolidated Tape (CT) data should not be mandatory to consume**: we have very strong concerns about the seemingly mandatory consumption of CT data pursuant to Recital 11, Articles 4(2), 6(5)(a), and 7(2)(a) of the draft RTS. We stress that Level 1 does not impose such consumption: Recital 9 of MiFID 3 states "that [i.e. the CTP] information **can** be used for proving best execution."

- **There are no clear benefits to clients from the proposed overly prescriptive requirements**: AFME notes the removal of RTS 28 for the reasons the reports were "hardly read and did not enable investors … to make meaningful comparisons based on the information provided in them"[1]. While clients may need some ability to compare execution brokers, order execution policy is not the appropriate place to reintroduce this overly granular comparability which goes against the burden reduction agenda of the European Commission.

- **The draft RTS scope does not consider the differences, or provide the necessary carve outs, between client categories or asset classes, where appropriate**: We believe that several requirements would not be appropriate for professional investors, where the potential limitations and weaknesses that exist in the retail investor sphere do not exist for professional investors.

[1] ESMA Public Statement on Deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review

Association for Financial Markets in Europe
London Office: Level 10, 20 Churchill Place, London E14 5HJ, United Kingdom T: +44 (0)20 3828 2700
Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540
Frankfurt Office: c/o SPACES - Regus First Floor Reception Große Gallusstraße 16-18 60312 Frankfurt am Main, Germany T:+ 49 (0)69 710 456 660
www.afme.eu

AFME members would welcome the opportunity to speak with ESMA to better understand the concerns and to contribute to developing more targeted solutions.

No	Question
1	Do you agree with the proposed categorisation of classes of financial instruments? And could the methodology based on, inter alia, the classification of financial instruments in the MiFID II RTSs 1 and 2 be used in the context of MiFID II transparency reporting be an alternative? Please state the reasons for your answers.
RESPONSE	

AFME members strongly oppose the use of ISO 10962 or MiFID RTSs 1 and 2 for the categorisation of classes of financial instruments, on account of their overly prescriptive nature.

A categorisation of classes of financial instruments is already in force and implemented. Existing Best Execution guidelines provide an appropriate breakdown of asset classes and this is how firms carry out orders and classify their execution policies. We believe this consultation paper disregards the existing framework which is already embedded in firms' operations.

We are concerned that the proposals would introduce complexity to how order execution policies are presented to clients, which is likely to lead to confusion for clients rather than providing meaningful information. Existing guidelines assert the importance to strike a balance between requiring firms to provide enough information so that clients can understand a firm's execution policy, compared to providing too much information which is of limited utility to clients.

Far from being an optimal solution, RTS 1 and 2 would be marginally preferred over ISO Standard proposals but neither option should encompass the level of granularity proposed by country categorisation. While the instrument type should be – and already is – a key factor in determining the appropriate execution approach, neither proposed prescriptive approach adequately facilitate achieving the best result for clients. Indeed, the proposals will place unnecessary limitations on firms' ability to achieving best execution along with an excess of information providing no additional value to clients.

In particular, in relation to ISO 10962, using two letter CFI codes introduces a level of granularity (e.g. differentiating between ordinary shares, convertible shares, preferred shares etc.) and is at a level of standardisation that is not currently used within the industry. In our experience servicing a broad range of market participants globally, clients do not need or want this level of information in order to understand the possible execution venues that a firm may execute their order at.

In addition, splitting shares for companies by country would be impractical as a different order execution policy would be required for each country. This runs counter to the harmonisation goals of the Capital Markets Union initiative. Moreover, in our experience, we have not observed that clients of execution services require differentiated policies at such a granular level. In fact, excessive disaggregation would not only create a significant maintenance burden but also reduce meaningful transparency for clients, particularly retail clients, who may struggle to understand which policy applies to them.

Firms' existing bank order execution policies are linked to the businesses and trading desk setups. To introduce these very prescriptive asset classes where the current setups are not linked to instruments or asset class codes, would mean the policies do not link into the business models firms operate with. This excessively restrictive approach removes the flexibility of order execution for firms to manage orders to the benefit of clients and select the best choice for them.

We remain supportive of the existing high level/umbrella requirements that recognise that order execution policies should reflect the asset classes firms operate with. We would favour the application of the current framework such that it is driven by high level asset classes as the industry and clients understand it (e.g. equities and equity derivatives, bonds, interest rate derivatives, credit derivatives, commodity derivatives, securitised derivatives). This is of more use to clients - rather than artificial differentiations where there are in fact rightly no meaningful differences in approach. Firms can then voluntarily choose to break this down further and/or provide further information to clients upon request.

No	Question
2	Do you believe that the current wording of the RTS is clear and sufficient with regard to the content of the order execution policy where an investment firm selects only one execution venue to execute all client orders? Or should the RTS provide for specific criteria to be taken into account when assessing if the selected venue achieves the best possible result in the execution of client orders? Please also state the reasons for your answer.

RESPONSE

We do not support the proposed revision of the current framework in relation to the selection of execution venues.

We do not believe the current wording should be amended as the criteria to determine the best possible result in existing Level 1, Level 2, and ESMA Q&As provide a comprehensive framework which is already well known and understood by the industry. Particularly, with respect to Recital 15 of the draft RTS (firms selecting only one execution venue to execute client orders), the ESMA Q&As[2] already clarify that firms are not prohibited from selecting only one execution venue to execute client orders if they are able to demonstrate that such a choice enables them to consistently get the best results for their clients. Additionally, firms need to regularly assess the market landscape to determine whether or not there are alternative venues that they could use.

We also would like to raise the following points regarding the proposed provisions on selection of execution venues:

(1) *Absence of necessary carve outs*

There is a general concern among our members that the draft RTS does not consider differences in trading between asset classes and appears to be modelled on interpretations of equity instrument market dynamics. The draft RTS is not relevant for most non-equity products, with the proposals lacking the necessary carve outs (where appropriate). This is also the case for equity products in some instances.

[2] Question 3 – Best Execution – Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics.

For example, in relation to *Article 4: Initial Selection of Venues,* firms would need to consider how this applies in the context of quote driven markets. Additionally, the information listed as requirements to determine the initial venue for selection does not account for the differences in available information for bonds and derivatives when traded on venue compared with equities. Some of the required factors, for example, speed and likelihood of execution and settlement from MiFID Article 27(1) do not exist/apply for bonds and OTC derivatives, and as currently worded, the RTS does not provide for these necessary carve outs from scope of application.

Also, *Article 5: Order Routing Criteria* does not take into account the differences between asset classes: order routing to an execution venue may apply in the equities business, however, may not be applicable for non-equities. Article 5(3) in the draft RTS requires firms to specify in its order execution policy the main characteristics of their automatic order routing system and arrangements in place. AFME members, however, believe that including this level of information on order routing systems, to include in an order execution policy, would lead to disclosure of too much detail which may not be beneficial to clients.

(2) *Excessive granularity*

AFME members also reiterate their concern, already expressed in Question 1, that such excessively prescriptive requirements do not provide any clear benefits for clients when in fact materially there may be no real difference in approach (besides potentially a different venue selected). These excessive requirements would lead to an excess of information that is of no use to clients, and we note existing guidelines that call out for the need to strike a balance. The criteria to be taken into account, when executing orders for clients i.e. cost, speed, price etc., are already outlined in Article 27(1) MIFID II and included in firms' order execution policies.

Also, within *Article 3: Establishment of an Order Execution Policy* it is unclear what benefit a list of selected execution venues with the new detailed information required is intended to provide. We note that Recitals 7 and 8 refer to internal policies of a firm and it would be helpful to confirm that this is the intention. Firms typically have internal policy and governance processes to satisfy the conditions of selecting a venue, which can be shared with clients bilaterally.

A requirement to establish a list specifying which execution venues are used for each class of financial instruments already exists in Article 66(3)(b) of the Commission Delegated Regulation 565/2017. However, the existing requirements are more high level than those proposed in the draft RTS.

The required information contained in the draft RTS is too specific, in a few cases entirely superfluous, and therefore creates unnecessary noise. While some level of transparency is helpful, and some of the information points are currently recorded, many of the information points (for example approval dates, names, and capacity of approvers), could be unknown as they could pre-date a significant number of people working in the organisations at any given time. Arguably, these informational items risk i) generating informational overload to the clients' detriment while ii) adding unnecessary burden for investment firms to search for this information retrospectively.

Firms are already required to identify and execute on appropriate venues. That is the regulatory requirement and clients' expectation: disclosure of venues does not change any of this and merely adds further to the information overload for clients. Clients, if they are interested, can ask for this information and Competent Authorities can investigate and ensure firms are adhering to the existing requirements.

Alternatively, a more proportionate way to address ESMA's perceived issues, would be to require the **maintenance of a simplified list that is transparent about what venues can be accessed following similar criteria as per the qualitative factors that already exist in Article 66 (3)(c) of the Commission Delegated Regulation 565/2017. AFME would be supportive of the qualitative factors mentioned such as clearing schemes, circuit breakers, scheduled actions.** See some examples of our members' disclosures (Example 1 , Example 2, and Example 3).

A simplified list would allow ESMA to observe the firms that do not have such broad membership of various venues and provide clients visibility over an array of venues with more choices. However, we continue to stress the proportionality point. Some asset classes may only have a few, or no venues, as it is also unclear whether this list encapsulates all liquidity sources or only regulated markets. Any list should be proportionate and appropriate to the relevant asset class.

As three further points of note:

- Article 3(3) says "orders may **only** be executed in the venues listed", which is overly restrictive.
- Recital 8 says "to effectively include appropriate execution venues in their order execution policies, investment firms should in their initial selection only account for venues authorised by national competent authorities". This may be a drafting error as it would be inappropriate to limit the venues to those authorised by NCAs – i.e. exclude third country venues.
- There may be a typo in Article 4(1)(g)(iii) of the draft RTS which we believe should refer to the delegated regulation 2017/565 not 2017/575 (which is RTS 27).

No	Question
3	Do you agree with the proposed factor of "order sizes" respectively for retail and professional clients, to be considered in investment firms' selection of eligible execution venues in their order execution policy and internal execution arrangements (see Article 4(1)(d)(i) and ii) of the draft RTS)? If not, what alternative factor would you propose?
RESPONSE	

The proposal to factor in "order sizes" when initially selecting execution venues for the order execution policy is not unreasonable. However, a client's order size is more likely considered as a factor when executing orders or routing an order to an execution venue. As such, the client's order size is relevant only at the point of execution, not at an earlier stage when the execution venue is selected for inclusion in the order execution policy.

We also reaffirm our concerns the draft RTS, including the list in *Article 4: Initial selection of execution venues for the order execution policy*, has not considered the differences between asset classes in which best execution typically applies and asset classes in which best execution does not apply, which should be considered differently within order execution policy. Firms should have discretion on the qualitative factors across financial products when selecting an execution venue.

The selection of venues for order execution policy is suitably addressed in existing CESR/ESMA guidelines which consider the complexity of best execution scope and proportionately carves out certain products where the best execution obligation may not apply. These guidelines allow firms to

tailor their best execution policies to where the orders are executed in accordance with best execution requirements, where applicable. Unhelpfully, Article 4 could be read to impose a blanket approach by requiring firms to apply best execution criteria even in situations where both parties to a trade are eligible counterparties.

Additionally, paragraph 34 of the draft RTS acknowledges there will be overlap and duplication of order execution policy between the draft RTS and Article 66(1) of the Delegated Regulation (EU) 2017/565 and that "ESMA has planned to ask the European Commission to delete such overlapping provisions, as relevant, when this draft RTS will be adopted". For ease of consumption and implementation, it would be preferable to consolidate the requirements into a single text.

No	Question
4	Do you agree with ESMA's proposals for the specification of the criteria for establishing and assessing the effectiveness of investment firms' order execution policies? Please also state the reasons for your answer.

RESPONSE

The factors outlined in Article 7 of the draft RTS could be considered when assessing the effectiveness of the order execution policy, however, some factors may not be relevant to all businesses. **We are comfortable with the current requirements (Article 27(7) MIFID) of assessing the execution venues included in the order execution policy and the execution arrangements. We deem the draft RTS as too prescriptive**.

Consistent with our past advocacy during the MiFID III/ MiFIR 2 negotiations, we have very strong concerns about the seemingly mandatory consumption of CT data pursuant to Recital 11, Articles 4(2), 6(5)(a), and 7(2)(a) of the draft RTS. We stress that Level 1 does not impose such consumption: Recital 9 of MiFID 3 states "that [i.e. the CTP] information **can** be used for proving best execution."

The order execution policy requirements should not be leveraged as a backdoor means of forcing mandatory consumption of the CT.

Market participants should not be compelled to consume CT data on the basis that it will provide them with the "golden source" of market activity and therefore improve trading overall. Irrespective of the CT's usefulness to users, and assumption the CT will meet a certain level of quality, AFME's firm position is that all CT consumption should be discretionary for reasons previously articulated.

Also, the phrase "where CT data is not available" in Article 6.5 (b) of the draft RTS is ambiguous, as this could provide for the tape not yet being live, could provide for a firm's choice to not buy the tape, or cater for cases when instruments are not covered by CT requirements, such as SFPs, ETDs.

AFME members are also concerned about the burden of proof for the use of alternative data sources to the CT for the following reasons:

- The burden of proof is problematic as investment firms use a data provider and therefore lose control of guaranteeing quality.

- This provision becomes especially burdensome while the CT is not live, as it requires investment firms to add more explanations and justifications to their monitoring while forcing them to prove the data quality to only land with the same end result and no additional benefit.

With this in mind, **we propose that the hierarchy amongst data sources is removed and we propose targeted amendments to the effect that the consumption of CT data remains optional.**

AFME Suggested Drafting (AFME changes are in bold and strikethrough):

Recital 11
~~(11) Once and where available, the data provided by the consolidated tapes will be valuable and the preferred source for assessing the quality of execution.~~
Article 4(2)
2. For the purpose of taking into account the criterion of price in accordance with paragraph 1, point (g), an investment firm shall use **a broad range of available data sources which could include** the consolidated tape data or alternative datasets~~, provided the alternative dataset provides at least the same reference data quality as the consolidated tape data~~. *[omissis]*
Article 6(5)
5. For the purposes of the monitoring procedure referred to in paragraph 1, an investment firm shall use a reference dataset based on~~:~~ ~~(a)~~ **A broad range of available data sources, which could include the** consolidated tape data **or~~;~~** ~~(b)~~ alternative data sources,~~ where consolidated tape data is not available or where the firm is able to demonstrate that an alternative dataset provides at least the same reference data quality;~~ *[omissis]*
Article 7(2)
2. The assessments referred to in paragraph 1 shall assess at least the following factors: (a) the price of execution compared to a reference dataset ~~based on~~ **which could include the** consolidated tape data or~~, where such data is unavailable or where an alternative dataset provides at least the same reference data quality,~~ alternative reference datasets;

[omissis]

No	Question
5	Do you agree with ESMA's proposal that investment firms may rely on monitoring and assessments performed by third parties, such as independent data providers, as long as firms assess the processes of these third parties? Please also state the reasons for your answer.
RESPONSE	

We accept that it may be appropriate to have third parties performing such activities and we believe this latitude should be preserved. However, as currently articulated the monitoring procedure is unnecessarily onerous.

AFME members are concerned with the granularity in Articles 6 and 7:

- on Article 6(2)(c) we reject the requirement to assess all transactions of the firm, and assert it is sufficient as a requirement to assess "a representative sample".
- on Article 6(2)(d) and (4) we query the relevance of minimum traded volume when best price is achieved.
- on Article 6(2)(a), the monitoring "at least once every three months" could be acceptable only upon the condition this monitoring does not result in changes to the policies and execution strategies. Policy and execution strategy changes (e.g. including a new market) would need a much longer time horizon than three months. Clearer guidance in interpreting this criterion would be advisable.

Additionally, monitoring under Article 6 would trigger a renegotiation of existing contracts as firms would need to ensure the data is of the required quality. This is an extremely long and costly process which adds an extra layer of complexity only to end up with the same end result with no clear benefit to the client.

No	Question
6	Concerning the specific client instruction, should it be possible for an investment firm to pre-select an execution venue in the order screen, where the firm invites its clients to choose an executing venue out of multiple options? And if so, do you agree that only if the client chooses a different venue than the one pre-selected by the firm, the choice of execution venue does constitute a specific instruction? Please also state the reasons for your answer.
RESPONSE	

Draft response:

We believe the existing rules in relation to client instruction are settled and there is no issue or gap that needs to be addressed. Should there be specific areas of concerns, we think supervisory and enforcement actions would be suitable, and in the event there are any shortcomings, clarification of the rules would suffice.

Question 6 refers to a very specific use case and our view is that the proposed requirements should only apply to the extent that the firm pre-selects or suggests venues to the client. Also, this requirement should not apply to professional clients.

This requirement to pre-select an execution venue in the order screen introduces a new process and would not necessarily add any value for clients, and therefore should not be required. Even if the firm is pre-selecting a venue, if the client instructs the firm to execute using their choice of execution venue, then this would be considered as a specific instruction from the client.

We are generally concerned that some of the provisions in *Article 8: Client instruction* are not possible to achieve their intended result.

For example, we are concerned that Article 8(4)(c) (the requirement to provide a warning to the client on a per order basis) may in practice prevent firms from achieving the best possible result for the client given the friction in the process that this would introduce. We illustrate the issue with two hypothetical scenarios: 1) the investment firm provides the warning and then must wait for the client to consent before executing the order, which could lead to poorer execution outcomes for the client if the market moves in the meantime, or 2) the investment firm proceeds with executing the order without needing to wait for consent (which eliminates the purpose of the warning). Both of these approaches will not improve the execution outcome for the client.

We reiterate our concern that the proposals in Article 8 do not consider the differences between asset classes or provide the appropriate carve outs for when and when not these scenarios apply. Article 8 proposals also appear to be more relevant for voice broking scenarios where the broker can manually disclose to the client, rather than electronic trading. For example, with Article 8(4)(c) it is not possible, within the way the User Interface (UI) operates, to include a warning immediately prior to the client placing an order.

We note, in particular, that Article 8(5) would seem entirely inconsistent with the approach taken to professional clients under MiFID. Currently our members have warnings in their execution policy that say that if the client gives specific instructions, that may prevent firms from taking steps designed to achieve the best possible result for the execution of those orders. This should be sufficient for professional clients. For example, in the context of both suitability and appropriateness provisions, firms are entitled to assume those clients possess the requisite "knowledge and experience" for the services provided, and yet, here it is suggested that firms must in effect question professional clients' competence. We do not anticipate such a warning have any impact on clients' willingness to select a venue of their choosing, and instead merely introduces unnecessary friction into the execution process.

No	Question
7	Where an investment firm executes client orders by dealing on own account (including back-to-back trading), in light of the specificity of this execution model and since it is bound by the rules governing best execution, do you believe the current text is clear with regard to what kind of obligations investment firm applying such model should comply with? Or do you believe it would be useful to provide in the RTS list and explanations of information that should be included in the order execution policy, such as related to the method and steps to be taken by the firm to establish the price of client

	transactions in back-to-back trading, or the methodology for the firm's application of mark-ups or mark-downs in such order executions? Please also state the reasons for your answer.

RESPONSE

It is unclear the problem ESMA is attempting to solve for in both *Article 9: Dealing on own account when executing client orders,* or this question. **Instances of when an investment firm is dealing on own account with best execution owed, is already clear in existing law.**

We reiterate our concern that the proposals do not consider the differences between asset classes or provide the appropriate carve outs.

We also find it concerning how both Article 9 and this question are framed, in particular the inclusion of back-to-back trading, which we do not see as necessary.

Additionally, we highlight concerns with Article 9(3), which refers to OTC products, and again is too broad as it brings all dealing on own account under the scope of best execution. It is not within the mandate of this RTS to expand the scope of best execution as this has already been comprehensively addressed through legislation and ESMA guidance amongst others. When within the scope of best execution, the current best execution rules apply. Adding additional requirements around when such orders should be executed on own account should not change firms' behaviour and we do not see any benefit of such provisions.

We do not agree with Recital 19, which in our view also casts the scope of the RTS too wide. Recital 19 stipulates some of the dealing on own account services when executing client orders that should be in scope of this RTS are "matched principal trading, dealing against the investment firm's own proprietary position, or executing in response to a 'request for quote'" (RFQ).

We acknowledge RFQ activity will sometimes be in scope for best execution, however, this is in very specific use cases which is currently determined aptly in existing law by the Four Fold Test.

The Four Fold Test[3] is regarded as the industry standard which most firms tend to benchmark RFQ responses and provides a clear workflow for when to descope certain transactions from best execution where appropriate. The RTS should reference the Four Fold Test as it is well established. We strongly urge not to change the scoping of RFQs (or other dealing on own account services when executing client orders activities) as the current framework works in practice and these broader activities should not be included in the scope of this RTS.

Recital 5 should, at the least, include the initiation of the transaction as part of their best execution assessment as this criteria will usually scope out RFQs. In RFQ trading, it is hard to claim that the client places legitimate trust in investment firms, as investment firms typically do not initiate the transaction. Also, clients involved in such transactions are usually highly experienced professionals who tend to compare prices across different entities. Moreover, the prices of the financial instruments in an RFQ are often transparent and publicly available, as they usually refer to standardised instruments.

No	Question

[3] CESR Q&As on Best Execution under MiFID, page 22, number 8

8	Are there any additional comments that you would like to raise and/or information that you would like to provide (for example, relevant information in relation to any expected costs and benefits arising from the proposals)?

RESPONSE

Based on section 18 of the Policy Background, AFME would argue that the concerns identified by ESMA would be better addressed through targeted supervisory action in relation to firms that are not properly adhering to the existing rules, rather than applying industry-wide changes that will not deliver meaningful benefit to clients and could in fact make order execution policies more cumbersome and difficult for clients to understand. We are perplexed about the need for further regulation to address these issues.

AFME notes the removal of RTS 28 for the reasons they were "hardly read and did not enable investors … to make meaningful comparisons based on the information provided in them[4]". While clients may need some ability to compare execution brokers, **order execution policy is not the appropriate place to reintroduce this overly granular comparability which goes against the burden reduction agenda of the European Commission**. In fact, these proposals overcomplicate the policy for investors and do not appear to add any value for improving transparency and could in practice, lead to unwanted changes in robust and embedded practices such as the assessment of actual execution performance via tools which may include Transaction Cost Analysis tools (TCAs). In practice, firms have found that clients are more likely to ask the trading desks directly when they have questions about their order execution.

We note the absence of a cost benefit analysis accompanying the draft RTS. It is therefore unclear how ESMA has come to the conclusion "that the provisions included in the draft RTS in the Annex II of this paper create significant benefits, while not creating substantial new costs for concerned market stakeholders beyond the ones that naturally stem from the Level 1 obligations", as stated in the Introduction, paragraph 5 on page 5. We strongly oppose the idea that the prescriptive requirements such as those articulated in the draft RTS will deliver any benefits to the consumer of this information. We also disagree with the assumption made by ESMA that the implementation costs would not be substantial.

A more proportionate way to address the shortcomings ESMA has observed would be to codify existing available material, such as existing Level 2 rules (which can be found in different legal sources), into the new draft RTS. Where existing rules apply these should not be rephrased. These existing rules should be lifted and shifted into a draft RTS to ensure stable language and legal certainty.A consolidation exercise should also be carried out in relation to existing Q&As. Having all the relevant rules and guidance in a consolidated and cohesive format would facilitate ease of consumption for firms and in turn, is likely to enhance compliance of the existing rules, which we argue continue to be fit for purpose.

We urge ESMA to leverage the existing legal architecture to the greatest extent possible and not introduce new requirements without firstly expressly articulating the particular issue which it is looking to address.

The scope of application of the draft RTS should be entirely re-calibrated, not only across asset classes (e.g. see Article 5 and 5(3)), but also in relation to client categories. We believe that several requirements would not be appropriate for professional investors, where the potential limitations and weaknesses that exist in the retail investor sphere do not exist for professional investors.

[4] ESMA Public Statement on Deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review

Finally, it would be useful for ESMA to make the final rules available to industry participants well in advanced of entry into force to ensure industry participants have adequate time to implement any changes and modify their current procedures to abide by the new rules.

AFME members would welcome the opportunity to speak with ESMA to better understand the concerns and to contribute to developing more targeted solutions.

AFME Contacts:

Giulia Pecce
Head of MiFID Policy

Helena Roughton
Senior Associate, Secondary Capital Markets and Wholesale Investor Protection