

**Comments on ESMA Consultation Paper  
(ESMA35-335435667-5891)  
Technical Standards specifying the criteria for estab-  
lishing and assessing the effectiveness of investment  
firms' order execution policies**

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## I. Question and Answers

**Q1: 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.**

No, we do not agree with the categorization of financial instrument classes according to ISO 10962 in the proposed form. Article 1 (1) should be deleted. Categorization based on the first two characters would result in 78 (!) categories. If the country of first listing were added for equities, there would be well over 100 categories. This would – contrary to the intention stated in recital 5 – unnecessarily drive up costs.

Furthermore, such a detailed categorization would not do justice to the financial instruments. For example, a distinction between common and preferred shares would be meaningless for these purposes. Above all clients would lose the overview. The order execution policy would become virtually worthless. Such a measure would not be perceived as client protection, but rather as an additional burden.

We believe that a list based on a classification set out by RTS 1 and RTS 2 is also not the best alternative. In terms of order execution quality there already existed a list in former RTS 28 Annex I which also formed the basis for order execution policies and should therefore be considered a model for categorisation of classes of financial instruments in a new RTS.

Alternatively, we suggest investment firms should be allowed to categorize the instruments as set out in Article 2 (2) by creating meaningful groups/clusters of financial instruments on the basis of ISO 10962. The reasons for this should be documented internally, but should not be included in the order execution policy. Disclosure of the internal logic behind the clusters would not add any value for customers. This information would only increase complexity and detract from the important information.

**Q2: 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.**

Yes, 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.

With regard to Article 3 we propose the following amendments:

Article 3 (1) should be deleted. The order execution policy should give clients a meaningful overview of the aspects that are important to them and relevant to their decision-making. Neither information on internal 'governance procedures' nor on measures to ensure the selection of approved execution venues is of interest to clients.

Article 3 (2) should make clear that the list of details of the selected execution venues – as set out in the order execution policy – is to be created for internal documentation purposes only and is not to be published. We see no tangible benefit for clients in the requirement to provide a wide range of information for each execution venue in the order execution policy as this would not improve client experience or client protection. Instead, this level of detail could lead to unnecessary complexity and confusion.

**Q3: 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?**

No, we do not agree with the proposed factor ‘order sizes’ for private and professional clients. Although differentiation by order size can be useful in principle, it should be independent of the client groups. Investment firms must be able to determine this independently. Article 4(1)(d)(i) and Article 4(1)(d)(ii) should be deleted.

The term commonly used in the securities business is ‘order size’. This term should replace the ambiguous term ‘investment amount’ in Article 4(1)(c). Article 4(1)(d) should be limited to the ‘typical frequency of orders from its clients’.

Furthermore, the use of real-time data should not be mandatory in order to determine the best possible result for the “price criterion”. Rather, it should be possible to use historical data. Otherwise, this would be an implicit introduction of the obligation to create a dynamic order execution policy.

Overall, the approach to select execution venues (Article 4) places a considerable burden on establishing an order execution policy without providing any recognizable added value for the client.

**Q4: 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.**

Recital 16 states that both the ‘compliance function’ and ‘senior management’ should be involved in decisions when determining the order execution policy. This would contradict the requirements for the ‘lines of defence’ for the compliance function. The role of the compliance function is limited to advising on the establishment and review of such principles and the associated processes and subsequent monitoring. It should also be possible to delegate the decision-making function by senior management to employees with sufficient knowledge. Recital 16 should be amended accordingly.

With regard to Article 5 we propose the following amendments:

Article 5(2)(d) and Article 5(2)(f) are to be deleted. There is no basis for the two paragraphs in Article 27(10) of MiFID II, nor do the contents correspond to the provisions of Article 27(1) and (4) of MiFID II. Pursuant to Article 27(1) and (4) MiFID II, investment firms are obliged to take sufficient steps in the sense of organizational precautions to ensure that clients generally receive the best possible result when executing client orders. However, the order-by-order check implied by Article 5(2)(d) and Article 5(2)(f) is specifically not required. Such an obligation would not be proportionate, as its implementation could only be achieved by highly complex systems. However, investment firms are of course free to offer their clients such a service and to price it accordingly if necessary.

With regard to Article 6 we propose the following amendments:

Investment firms will be charged for retrieving data from a consolidated tape provider (CTP). Furthermore, it is to be expected that there will be a CTP for each asset class, meaning that costs and requirements for the technical connection will arise not just once but multiple times. Consequently, there is no obligation to connect to and accept data from a CTP at Level 1. Contrarily, recital 11 and Article 6(5)(a) and (b) would oblige investment firms to accept CT data as soon as a CTP becomes available, incurring costs for them. There is no basis for such an obligation. Recital 11 and Article 6(5)(a) and (b) should therefore be deleted.

The provisions made in Article 6 do not appear to be covered by Article 27(10)(b) of MiFID II. It merely states that 'the frequency of assessing and updating the order execution policy' should be regulated at Level 2. According to the draft RTS, a distinction must be made between monitoring and assessing. Since there is no requirement for such a distinction at Level 1 in this area, we suggest that the current rules and practices should be retained. Under these, investment firms are obliged to monitor their order execution policies, without there being any detailed provisions in the RTS regarding the frequency or the processes. Therefore, investment firms should continue to be able to determine how they organize the monitoring, both in terms of content and frequency, depending on their business model and volume. A uniform regulation for all investment firms is neither intended at Level 1 nor necessary. It would only increase the administrative burden.

Furthermore, there is no distinction between own execution and forwarding of execution to a broker. Comprehensive monitoring as provided for in Article 6 can only be required and implemented in the case of own order execution. The requirements should be limited to this constellation by means of a corresponding clarification. In the case of an order being forwarded to a broker who then executes the order on the basis of its own order execution policy, there should be no obligation for extensive monitoring. These cases are already conclusively regulated by Article 65 of the Implementing Regulation 2017/565.

**Q5: 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.**

Yes, we agree with ESMA's proposal that investment firms can rely on monitoring and assessment by third parties.

With regard to Article 7 we propose the following amendments:

Article 7(2)(e) should be deleted. The term 'market developments' used in this article is unclear. At most, it would include new execution venues and new functionalities. These aspects are already explicitly covered in the subsequent letters (f) and (g). Alternatively, Article 7 (2)(e) could be limited to 'other relevant market developments' and be made the last letter in this Article of the RTS.

**Q6: 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.**

Yes, it should be possible for an investment firm to pre-select an execution venue in the order form. We also agree that only if the client selects an execution venue other than the one pre-selected by the investment firm, the client's selection constitutes a specific instruction.

At the same time, however, it must continue to be possible to accept client orders only on the basis of an instruction regarding the execution venue. Recital 102 of the Regulation (EU) 2017/565 continues to apply:

„However, this should not prevent a firm inviting a client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm.”

Article 8(4)(d) would violate this, which is why it should be deleted.

Also, the disclosure requirement in Article 8 (4) (c) should be deleted. The concept of an informed investor should be used here in order to respect the client's right of self-determination. Such a disclosure would unnecessarily delay the execution process. A corresponding warning is included in the client information on the execution principles. This is sufficient.

**Q7: 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.

Yes, the current text is sufficiently clear.

**Q8: 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)?**

Depending on the scope and level of detail of the technical changes and adjustments to be made, an implementation period of at least 12 to 18 months is necessary.

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