

Consultation Paper

Technical Standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **16 October 2024**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. 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 under the heading '[Data protection](#)'.

Who should read this paper?

This paper is primarily of interest to competent authorities, firms that are subject to Directive 2014/65/EU on Markets in Financial Instruments (MiFID II) and investors.

Table of Contents

1	Executive Summary.....	4
2	Introduction.....	5
3	Background	5
3.1	Legal background	5
3.2	Policy background and assessment.....	8
4	Annexes	16
4.1	Annex I.....	16
4.2	Annex II.....	18

1 Executive Summary

Reasons for publication

The Directive amending the Directive on Markets in financial instruments (MiFID II review)¹ was published in the Official Journal of the European Union (EU) on 8 March 2024. The European Securities and Markets Authority (ESMA) has been empowered to develop technical standards (RTS) specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies, accounting for whether the orders are executed on behalf of retail or professional clients. This Consultation Paper therefore seeks stakeholders' views, comments and opinions on ESMA's proposals for such a RTS. The input from stakeholders will help ESMA finalise the draft RTS before submitting it to the European Commission.

Contents

This Consultation Paper presents a draft version of the Technical Standards on investment firms' order execution policies that ESMA is due to submit to the European Commission according to the MiFID II review. Section 2 sets out the key steps of the co-legislators which resulted in the MiFID II review text. Section 3 sets out the legal and policy backgrounds of the proposed draft RTS as well as the key elements included in the draft RTS. Annex I summarises the questions to stakeholders, Annex II contains the full text of the draft RTS.

Next Steps

ESMA will consider the feedback received to this consultation and expects to publish a final report and submit the draft technical standards to the European Commission for endorsement by 29 December 2024.

¹ OJ L, 2024/790, 8.3.2024, p. 1-11.

2 Introduction

1. On 25 November 2021, the European Commission adopted a legislative proposal for a Directive amending Directive 2014/65/EU on Markets in financial instruments².
2. The Directive amending the Directive on Markets in financial instruments (MiFID II review) was published in the Official Journal on 8 March 2024 and entered into force on 29 March 2024.³
3. Article 1(4)(e) of the MiFID II review requires ESMA to develop a RTS on the criteria for establishing and assessing the effectiveness of investment firms' order execution policies.
4. These technical standards should be submitted by ESMA to the European Commission by 29 December 2024
5. While this Consultation Paper does not include a draft cost-benefit analysis, ESMA has developed this draft RTS to foster investor protection and the related beneficial effects across the Single Market. Simultaneously, ESMA has also had due regard to the principle of proportionality and has been mindful about the possible costs the obligations would create for market participants. ESMA considers 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. Nevertheless, respondents are invited to highlight in their response the benefits of the proposals and any specific concerns the ESMA proposals could raise for them in terms of their associated costs. ESMA will publish a cost-benefit analysis together with the ESMA Final Report.

3 Background

3.1 Legal background

Article 1(4)(e) of the MiFID II review setting out the following new paragraph 27(10) of MiFID II

ESMA shall develop draft regulatory technical standards to specify the criteria to be taken into account in establishing and assessing the effectiveness of the order execution policy pursuant

² Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0726>

³ Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400790

to paragraphs 5 and 7, taking into account whether the orders are executed on behalf of retail or professional clients.

Those criteria shall include at least the following:

(a) factors determining the choice of execution venues included in the order execution policy;

(b) the frequency of assessing and updating the order execution policy;

(c) the manner in which to identify classes of financial instruments as referred to in paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 29 December 2024.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.⁴

6. Article 27 of the Directive 2014/65/EU⁴ ("MIFID II") sets out best execution requirements which aim at ensuring that investment firms take all sufficient steps to obtain, when executing client orders, the 'best possible result' for their clients.
7. More particularly, Article 27(1) of MiFID II stipulates that Member States must require that investment firms take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, where there is a specific instruction from the client the investment firm is obliged to execute the order following the specific instruction.
8. Moreover, where an investment firm executes an order on behalf of a retail client, the best possible result must be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which must include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.
9. Additionally, for the purposes of delivering best possible result in accordance with the above mentioned requirement where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm's order execution policy that is capable of executing that order, the

⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (OJ L 173, 12.6.2014, p. 349–496).

investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

10. Article 27(4) of MiFID II sets out that Member States must require investment firms to establish and implement effective arrangements for complying with the obligation set out by Article 27(1) of MiFID II. In particular, Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result.
11. Article 27(5) of MiFID II specifies that order execution policy must include, in respect of each class of financial instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It must at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.
12. Additionally, Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the investment firm for the client. Member States shall require that investment firms obtain the prior consent of their clients to the order execution policy.
13. Moreover, Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a trading venue, the investment firm shall, in particular, inform its clients about that possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a trading venue. Investment firms may obtain such consent either in the form of a general agreement or in respect of individual transactions.
14. Article 27(7) of MiFID II stipulates that Member States shall require investment firms which execute client orders to monitor the effectiveness of their order execution arrangements and execution policy for the purpose of identifying and, where appropriate, correcting any deficiencies. In particular, Member States shall require such investment firms to assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall also require investment firms to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.
15. Article 27(8) of MiFID II sets out that Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the investment firm's execution policy and to demonstrate to the competent authority, at its request, their compliance with this Article.

3.2 Policy background and assessment

16. When an investment firm executes a specific client order, the choice of the appropriate execution venue requires a complex assessment of a range of factors (inter alia, the offered price of the related financial instrument, liquidity provided on the venue, and transaction costs charged by venues for the order). Therefore, the selection of an appropriate execution venue is a crucial task for the firm to achieve the best possible result in the execution of its client orders, i.e., to obtain “best execution”. The complexity of this choice is further exacerbated, as the securities market of the European Union is highly fragmented.⁵ This results in a broad choice of venues where a firm can send an order to buy or sell a financial instrument.
17. To ensure that firms take all sufficient steps to obtain the best possible result when executing their clients’ orders (while accounting for inter alia price, costs, speed of execution), Article 27 of MiFID II sets out requirements for firms concerning best execution. This includes the obligation for firms to describe their processes to achieve best execution, so called “order execution policies”, and to implement these policies.
18. However, as observed during ESMA’s work related to the MiFID II best execution requirements and more profoundly by NCAs through their supervisory activities, the actual implementation of firms’ execution policies under MiFID II have shown shortcomings and areas for improvement. In other words, it has been observed that in several EU jurisdictions at least some firms, inter alia:
- did not provide sufficiently documented analytical efforts to justify their choice of execution venues;
 - did not properly demonstrate that they executed client orders in accordance with their order execution policies;
 - disclosed publicly only rather generic information about their order execution policy and their steps taken to obtain the best possible result when executing client orders.
19. Additionally, feedback from national competent authorities and stakeholders expressed during the legislative procedure related to the MiFID II review, has shown that requirements for firms’ order execution policies could also benefit from further clarification.
20. Thus, ESMA has developed the proposals for the draft RTS in light of the mandate set out in Article 27(10) MiFID II and from the policy perspective that order execution policies should effectively contribute to enhance the execution quality for retail and professional clients, through requirements aiming at fostering an effective establishment and

⁵ As of April 2024, the EU securities market encompasses, for example, 309 trading venues and 181 systematic internalisers (see [ESMA Registers \(europa.eu\)](https://esma.europa.eu/registers)).

assessment of the order execution policy. These encompass inter alia criteria for the selection of execution venues allowing to effectively obtain best execution and robust monitoring and assessment resulting in appropriate updates of firms' execution policies and order execution arrangements.

Key elements of the proposed draft RTS on firms' order execution policies

Proposed requirements for the establishment of investment firms' order execution policies

21. In their order execution policy and arrangements, investment firms should distinguish between the different classes of financial instruments they offer. For this draft RTS, it is proposed that these classes of financial instruments shall be based on the instrument groups of ISO Standard 10962. Thus, each group of financial instruments of this ISO Standard composed of the first two letters of the CFI code shall correspond to a class of financial instruments. Additionally, each country of primary listing for the groups in the equities category (E-*-***) shall constitute a separate class of financial instruments.⁶ Since the number of orders in a specific class of financial instruments can be relatively low at a specific investment firm, firms should be able to cluster several classes of instruments into a single class, if this does not impair firms from obtaining the best possible result.
22. As an alternative methodology, a fixed list of classes of financial instruments could be set out in the draft RTS. This list could, inter alia, be based on the classification of financial instruments set out by the MiFID II RTSs 1 and 2⁷. Accordingly in this proposal:
 - each country of primary listing for shares in companies shall constitute a separate class of financial instruments;
 - all other financial instruments would be grouped in about 15-20 classes of instruments;
 - the clustering of several classes of instruments into a single class described in the previous paragraph could also be allowed.

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

⁶ For the classification of financial instruments (CFI) code (ISO 10962), including the different groups of instruments (ie, the second CFI code character representing such a group within a given category of financial instruments) see the following table, as provided adjacent to the ISO 10962 standard: <https://www.six-group.com/dam/download/financial-information/data-center/cfi/cfi-20210507-current.xlsx>

⁷ Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (RTS 1): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0587>
 Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (RTS 2): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0583>

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.

23. As a basis for an effective order execution policy and order execution arrangements, firms should pre-select the venues eligible for client order execution according to criteria allowing for a meaningful assessment to what extent the best possible result for clients can be obtained on these venues. Therefore, the draft RTS suggests requiring firms to include in their execution policies at least these venues that enable the firms to obtain on a consistent basis the best possible result for the execution of client orders. According to the draft RTS, even where firms select only one execution venue to execute client orders for a given class of financial instruments, or even for all client orders, the firm is required to comply with all relevant requirements in the Regulation. More specifically, firms must select these venues per class of financial instruments, per category of retail and/or professional clients and by accounting for certain further factors which include:

- different order frequencies and values for retail and professional clients respectively;
- whether the executed financial instruments are EU- or non-EU instruments.

24. The order execution quality of venues may differ depending on the class of financial instruments (e.g., certain EU venues may provide more liquidity in relation to bonds than others). To allow for an effective selection of venues for firms' execution policies and for executing client orders firms need to consider these differences. ESMA believes it is crucial for firms to identify and distinguish the venues used to execute client orders for different classes of financial instruments, as also mentioned in Article 27(5) of MiFID II. Thus, the draft RTS proposes to require firms in their execution policies to categorise the information for each venue they plan to use for executing client orders. This categorisation should be used for each class of financial instruments for which the firms intend to offer order execution services.

25. To operationalise the aforementioned pre-selection process, ESMA considers it as relevant that investment firms choose a set of authorised venues, allowing them to obtain the best possible result in their execution of client orders. Accordingly, the draft RTS proposes to require firms to establish and keep updated a list of venues for the execution of client orders. The suggested requirements related to that list include that it must consist of venues authorised by national competent authorities or third-country authorities, and must be determined according to the firms' internal governance procedures. Additionally, the list must include certain information about the selected venues (or entities performing a similar function in a third country) for executing client orders, which includes inter alia:

- information about the internal approval of the venue through firms' governance procedures (e.g. date of approval and name and capacity of the person or name of the governance body that approved the venue);
- for which classes of financial instruments the execution venue can be used;

- for which categories of clients the execution venue can be used.

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.

26. In practice, often a specific client order can be executed on several venues. To provide meaningful information on the criteria that a firm applies to identify the venue to which it will route the order for execution, its execution policy should include information on the obligatory and discretionary factors the firm accounts for when making the routing decision. Consequently, when a specific client order may be executed on at least two venues, the draft RTS proposes that in its execution policy a firm must specify certain criteria (and their relative importance) for its choice of the executing venue. In particular, these criteria must be specified for (i) each class of financial instruments, (ii) retail and professional clients and (iii) based on an analysis which must include certain factors, inter alia:

- all costs directly related to the execution of the order, including any fees and commissions charged by the investment firm itself;
- as relevant to determine the best possible result for the client: real-time market or historical data on the relevant financial instrument or class of financial instruments to identify the appropriate venue for order execution;
- the characteristics of the order, such as its size and nature.

27. Additionally, if the firm uses an automatic order routing system, it is obliged to describe the main characteristics of the system in its order execution policy.

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?

Proposed requirements for the assessment of investment firms’ order execution policies

28. It is important for firms to perform continuous monitoring to observe their obtained execution quality. This monitoring should allow firms to initiate a review of their order execution policies and arrangements as well as its selection of venues, in case of significant events which may impact their execution quality and/or if their obtained execution quality is insufficient. Accordingly, aiming at establishing effective monitoring

processes by firms, as required by MiFID II, the draft RTS proposes certain requirements, which include inter alia that:

- in their order execution policy, firms must set out the frequency and methodology applied to their continuous or periodic monitoring.
- as part of their monitoring, firms can assess all transactions or alternatively a representative sample of transactions per class of financial instruments. In both cases, firms must measure the performance per class of financial instruments related to specific thresholds. A review of the selected execution venue(s) for the respective class of financial instruments would be triggered when the overall performance of the monitored transactions during a monitoring period breached a previously determined minimum percentage of traded volume which should have been above the threshold.

29. Additionally, the draft RTS proposes that firms may comply with the requirements related to the monitoring, by relying on monitoring performed by a third party (e.g., an independent data provider). However, in this case, the firm is still obliged to assess the monitoring process set up by the third party.

30. To ensure that firms keep regularly track of their order execution policies and order execution arrangements, the draft RTS also suggests certain requirements for firms' review of these. Such a review may lead to the conclusion that a venue no longer consistently obtains the best possible result. The draft RTS proposes to oblige firms based on the aforementioned monitoring and at least annually, or whenever a material change⁸ occurs, to assess their selected venues and order execution arrangements. This includes that firms must assess whether the execution venues included in their execution policies allow them to obtain the best possible result for their clients and to take account inter alia the following factors:

- the emergence of new execution venues;
- new functionalities or execution services provided by venues.

31. In light of their review results, firms are then required to update their order execution policies and order execution arrangements and correct any deficiencies within a reasonable period based on the seriousness of the deficiency (but at the latest three months after the conclusion of the review).

32. The assessment should be based on the transactions that are the result of the orders the investment firm has executed for its clients. To ensure that the aforementioned

⁸ A material change⁸ means a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order (Article 65(7) of Commission Delegated Regulation (EU) 2017/565).

assessments are conducted on a robust basis, the draft RTS suggests certain requirements for firms, which include inter alia that the analysis must:

- include a comparison of the prices obtained for client orders with a reference dataset. This reference dataset should be based on consolidated tape data, where available, or could be based on an alternative dataset provided that this alternative dataset provides at least the same reference data quality;
- explicitly distinguish the fees related to the order execution and charged to the firm (e.g. cost of venue membership) which may impact the choice of venue.

33. Additionally, the draft RTS proposes that firms may comply with the requirements related to the assessment order execution policies, by relying on an analysis conducted by a third party (e.g., an independent data provider). However, in this case, the firm is still obliged to review the external assessment thoroughly and to ensure that it is representative for the firm's client base, especially with regard to the instruments and order sizes assessed.

34. Some of these proposed requirements may overlap with the requirements set out in Article 66(1) of the Delegated Regulation (EU) 2017/565. To ensure consistency between the draft RTS and the Delegated Regulation, ESMA has planned to ask the European Commission to delete such overlapping provisions, as relevant, when this draft RTS will be adopted.

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.

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.

Proposed requirements for firms' order execution policies related to client instructions and dealing on own account execution practices

35. MiFID II sets out that a client may provide a specific instruction. If an investment firm accepts such specific client instructions, it must follow the instruction. When executing an order after such a specific instruction, the firm is deemed to have satisfied its obligation to take all sufficient steps to obtain the best possible result with regard to the part(s) or aspect(s) of the specific instruction. Thus, the specific instruction has significant consequences in light of the best execution requirements. Against that backdrop, the draft RTS's proposal requires firms to set out in their order execution policies the arrangements for dealing appropriately with specific instructions from clients. Firms must specify the impact of instructions on the criteria of the venues selected for firms' order execution and their ability to obtain the best possible result for the instructing client.

36. Moreover, the draft RTS suggests requiring firms to define in their order execution policy how to differentiate between orders with and without specific client instructions. Accordingly, firms must at least describe that a specific client instruction involves either:

- a choice of one option out of multiple options offered by the investment firm related to a part or aspect of the order;
- an instruction to the investment firm to handle the order in a different way than foreseen by the order execution policy.

37. The draft RTS also proposes that where firms receive a specific instruction, they shall only treat the part or aspect of the order specified by the client as a specific client instruction. For all other parts and aspects of the order, firms shall ensure in their order execution policy provides that they are processed in the same way as orders without specific instructions.

38. Further suggestions related to client instructions include that where firms offer the client to choose an execution venue, the firms are obliged to include the certain details in their order execution policy which encompass inter alia (i) an explanation of how the policy prevents inducing a client to choose a specific execution venue and (ii) a warning to the client immediately prior to placing an order that the client's selection of an execution venue prevent the firm from obtaining the best possible result for the execution of the order.

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.

39. Firms should also obtain the best possible result for their clients in accordance with Article 27(1) MiFID II when executing client orders based on own account deals. Therefore, the draft RTS suggests that the firms' order execution policies must specify in their order execution policies the arrangements to ensure that the firms only deal on own account when executing client orders, where all of the following conditions are met:

- the order execution policy of the investment firm expressly provides for the option of executing client orders on own account;
- executing client orders on own account provides the best possible result for their clients;

40. Additionally, the draft RTS proposes that investment firms are obliged to set out in their order execution policies to ensure compliance with certain organisational and methodological disclosure requirements, including:

- to adequately identify, prevent and manage the conflicts of interest related to dealing on own account when executing client orders;
- to ensure the fairness of the price proposed to the client when dealing on own account in OTC products, in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565.

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.

41. ESMA's proposals for the draft RTS specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies referred to in Article 27(10) of MiFID II review is set out in Annex II.

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)?

4 Annexes

4.1 Annex I

Summary of questions

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 comment.

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.

The RTS should provide specific criteria. An execution policy should have strong and effective reasoning why a single venue achieves best execution - due to the likelihood of such a scenario not achieving best execution.

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?

We agree in principle with the idea that more specific criteria would standardize the evaluation process across firms. However, we believe the proposed criteria presents significant operational burdens on firms which already have sufficient assessment processes in place that is appropriate for their business model. These firms will be required to implement a new processes to evaluate venues on the basis of the new criteria that appear to enforce a one size fits all approach rather than allowing approaches that best suit business models. The best execution considerations of a retail broker and a wholesale broker can differ considerably - in terms of clients, technology, execution venues and client expectations. We believe the RTS should have language to allow for flexibility to account for differing business models.

We believe a more balanced approach is warranted, where the RTS emphasizes general principles rather than prescriptive criteria. Further, we suggest the list of non-exhaustive criteria be issued in a form of non-legally binding guidelines or recommendations. These principles could refer to, for instance, class of financial instruments, type of clients or other factors. Allowing firms to apply the principles to their own unique circumstances while maintaining the flexibility needed

to optimize execution would promote better outcomes for all parties.

Furthermore, the requirement to use such criteria as class of financial instruments, client type, order costs, market data, and the quality of executions presents firms with an enormous operational burden where Firms have large lists of possible execution venues - something typically associated with providing better execution.

Firms would have to consider a very long list of specific criteria on receipt of an order. Requiring this list would likely limit innovation, as the firms will have to update this list for every change, which will be difficult to maintain. Lastly, metrics which are based on historical execution are very limited to the order set received by the broker. There is potential for skewing these metrics, so they may not indicate future "quality of execution" and forcing firms to consider these metrics may not lead to best execution in all scenarios.

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.

No comment.

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.

No comment.

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.

The draft RTS requires firms to ensure best execution even when clients provide specific instructions. We feel this is a valuable rule when protecting retail clients given they are non-professional. Pre selecting a venue in these circumstances could be detrimental to execution quality and is likely not representative of what the end client actually prefers.

However, we do not believe this is appropriate for institutional clients classified as professional or ECP. Such clients are experienced traders, who are presumed to understand execution risks, and want/need discretion of how/where their trades are executed. Extending this requirement to institutional clients seems overly excessive and disproportionate, and applying 'one-size-fits-all' approach in this situation contradicts the idea of the MiFID II investor protection framework.

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.

No comment.

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)? reporting be an alternative? Please state the reasons for your answers.

No comment.

4.2 Annex II

Draft RTS specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies

COMMISSION DELEGATED REGULATION (EU) 2024/...
of XXX

**supplementing Directive 2014/65/EU of the European Parliament and of the Council
with regard to regulatory technical standards for the criteria to be taken into account
in establishing and assessing the effectiveness of order execution policies of
investment firms
(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU⁹, and in particular Article 27(10), fourth subparagraph thereof,

Whereas:

- (1) To ensure order execution quality for retail and professional investors in accordance with Article 27(1) of Directive 2014/65/EU and a level-playing field between investment firms providing the service of execution of orders on behalf of clients and those investment firms providing reception and transmission of orders, policies are required to be in place for the provision of the investment services.
- (2) For the service of reception and transmission of orders, Article 65 of Commission Delegated Regulation 2017/565¹⁰ applies, which includes establishing and implementing a policy to reach the best possible result for their clients in accordance with Article 27(1) of Directive 2014/65/EU. Investment firms offering such service should have policies and arrangements in place that ensure that the third parties the client orders are placed with or transmitted to, comply with the requirements in this Regulation. Investment firms providing the investment service reception and transmission of orders should also monitor and periodically assess the execution quality provided by these third parties and make amendments to the execution arrangements when deficiencies are identified.

⁹ OJ L 173, 12.6.2014, p. 349.

¹⁰ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 087 31.3.2017, p. 1).

- (3) Where an investment firm relies on a single entity for the execution of all client orders, the investment firm should assess whether the execution arrangements of the entity enable the firm to obtain the best possible results for its clients and whether changes are necessary. This assessment should be reviewed periodically. These changes should include modifying the agreement with the entity to ensure better outcomes for their clients or forwarding client orders to other entities when this is in the best interest of their clients.
- (4) Where investment firms provide both the investment services of execution of orders and reception and transmission of orders related to the same class of financial instruments, they should take both investment services in consideration for these classes of financial instruments when complying with the provisions included in this Regulation.
- (5) Retail clients legitimately rely on the firm to protect their interests in relation to the pricing and other parameters of the transaction. However, professional clients may not always rely on the investment firm for best execution in the same way. Whether or not a professional client may rely on the investment firm for best execution depends on the specific circumstances and should be assessed on an individual basis. This assessment should take into account at least the specific agreement between the investment firm and the professional client, the characteristics of the financial instrument involved, the ability for the professional client to observe market transparency, and the ability to obtain competitive quotes from other firms.
- (6) To clarify the overarching objective of their client order execution activities, investment firms should set out in their order execution policies that, pursuant to Article 27(1) of Directive 2014/65/EU, they take all sufficient steps when executing client orders to obtain the best possible result for retail clients by pursuing the total consideration approach. Additionally, investment firms should also describe their approach for professional clients, if different from the total consideration.
- (7) Investment firms should determine which execution venues are included in their internal order execution policies and arrangements, by initiating a selection process that meets the requirements of this Regulation.
- (8) 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 and do this selection in accordance with their internal governance procedures. Investment firms should also keep an up-to-date list of internally approved execution venues which they intend to use.
- (9) To provide meaningful information on the criteria that an investment firm applies to identify the venue to which it will route the order for execution where a specific client order can be executed on several venues, the execution policy should include information on the obligatory and discretionary factors the firm accounted for when making the order routing decision.
- (10) Comparing execution prices with a limited dataset of pre-trade transparent orders is often insufficient when assessing the quality of execution, considering that transactions can often be executed close to mid-point. Therefore, methods comparing actual execution prices provide the added value of using actual execution prices and show their average difference to mid-point. Pre-transparent orders represent only a portion of actual trading interests, whereas post-transparency covers all trades. Consequently, analytical methods that use actual execution prices in a discrete-time model, are preferable methods to conduct assessments under this Regulation. However, for specific classes of financial instruments, the availability of actually executed prices may be limited. Therefore, it is also possible to utilize methods that use pre-trade order data. Provided that the quality of the assessment for those classes of financial instruments is at least equal compared to methods that use actually executed prices and investment firms are

- able to demonstrate so.
- (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.
 - (12) Where an investment firm has initiated the offering of investment services with regards to the execution venues it has selected and identified for its order execution policy, the firm should implement a monitoring process to observe the execution quality of the orders it has executed for its clients. The investment firm should define thresholds per class of financial instrument, to monitor whether it obtains, on a consistent basis, the best possible result for clients. This monitoring should enable the firm to initiate an event-driven review of its order execution policies and arrangements and the selection of execution venues in case the achieved execution quality is insufficient.
 - (13) The investment firm should assess the selected execution venues and their order execution arrangements, which may lead to the conclusion that an execution venue no longer consistently obtains the best possible result. The assessment should be based on the transactions that are the result of the orders the investment firm has executed for its clients on these venues and other relevant venues which should be included in these analyses.
 - (14) The investment firm's assessment of its order execution policy and internal execution arrangements should include an assessment to ensure that contractual arrangements, such as long-term contracts or exclusivity agreements, do not impede providing for the best possible result for the client, in particular, when deficiencies have been identified and need to be corrected. Consequently, the investment firm may have to reconsider and renegotiate its contractual arrangements with execution venues.
 - (15) Where an investment firm selects only one execution venue to execute client orders for a given class of financial instruments, or even for all client orders, the firm should comply with all relevant requirements in this Regulation. For example, only when the firm can substantiate that it is in the best interest of its clients to select only one execution venue, this venue should be included in the order execution policy. Accordingly, where the monitoring or assessment reveals that better execution quality can be obtained by including additional or different execution venues in the order execution policy, the firm should do so.
 - (16) Both senior management and the compliance function have an important role within the investment firm to ensure its compliance with its obligations under Directive 2014/65/EU. Due to the complex nature of best execution and the importance of the topic, these functions may rely on support by other units of the investment firm, for example, the risk management unit, to ensure decisions are made on a sound basis. However, both the compliance function and senior management should have a decision-making role in the establishment and assessment of the order execution policy.
 - (17) It is important that investment firms keep appropriate records of their client relations, client order handling and any order execution policies, arrangements, and reviews thereof to enable competent authorities to fulfil their supervisory tasks and perform enforcement actions as needed, in view of ensuring both investor protection and market integrity. Additionally, investment firms should keep these records in machine-readable format to facilitate data analysis and to enable competent authorities to act more efficiently.
 - (18) According to Article 27(1) of Directive 2014/65/EU, clients may provide a specific instruction related to a part or aspect of an order. If an investment firm accepts such specific instruction, the investment firm should follow this instruction in respect of that part or aspect when executing the order. All other parts and aspects of the order that are not part of the specific instruction should be treated as a regular client order. Article 64(2)

of the Commission Delegated Regulation (EU) 2017/565 sets out that when following such a specific instruction, the investment firm satisfies its obligation under Article 27(1) of Directive 2014/65/EU to take all sufficient steps to obtain the best possible result for a client. Accordingly, the specific instruction has significant investor protection consequences. Therefore, it is important to clarify what constitutes a specific client instruction and the safeguards that investment firms should include in their order execution policy to ensure the correct use of the specific client instruction. These safeguards should, among others, prevent that firms apply practices such as dark patterns, that materially distort or impair, either on purpose or in effect, hamper the ability of recipients of the service to make autonomous and informed choices or decisions.

- (19) To ensure that investment firms obtain the best possible result for their clients in accordance with Article 27(1) of Directive 2014/65/EU when executing client orders based on own account deals, such as with matched principal trading, dealing against the investment firm's own proprietary position, or executing in response to a 'request for quote', the order execution policy should, in addition to all other requirements included in this Regulation, address the identification and management of conflicts of interest between investment firms and clients.
- (20) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹¹,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'class of financial instruments' means any of the classes of financial instruments specified in Article 2;
- (b) 'execution venue' means an execution venue as referred to in Article 64(1), second subparagraph, of Commission Delegated Regulation (EU) 2017/565;
- (c) 'machine-readable format' means a machine-readable format as defined in Article 2, point (13), of Directive (EU) 2019/1024 of the European Parliament and of the Council¹²;
- (d) 'material change' means a material change as referred to in Article 65(7), fourth

¹¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

¹² Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

subparagraph, of Commission Delegated Regulation (EU) 2017/565;

- (e) 'securities financing transaction' means a securities financing transaction as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council¹³.

Article 2

Classes of financial instruments

1. The manner in which to identify classes of financial instruments as referred to in Article 27(5) of Directive 2014/65/EU shall be based on the instrument groups included in ISO 10962 on the classification of financial instruments (CFI) in the following way:
 - (a) each group of financial instruments in ISO 10962 composed of the first two letters of the CFI code shall constitute a class of financial instruments;
 - (b) for the groups within the equities category as defined in ISO 10962, E-*-*-*-*-, each country of primary listing shall constitute an additional class of financial instruments.
2. By way of derogation from paragraph 1, several ISO 10962 groups of financial instruments may be clustered into a single class of financial instruments, provided that these groups have homogeneous characteristics. Investment firms shall demonstrate in their order execution policies the reasons for clustering any groups and the reasons the clustering does not impair the ability to obtain the best possible result for clients.

Article 3

Establishment of an order execution policy

1. An investment firm shall specify the following in its order execution policy in relation to execution venues:
 - (a) the internal governance procedures for the selection of execution venues;
 - (b) the measures taken to ensure selected execution venues are authorised by competent authorities or third-country authorities, as the case may be.
2. An investment firm shall maintain a list of the execution venues selected as part of its order execution policy, including at least the following information:
 - (a) name and identifier of the execution venue;
 - (b) the date when the investment firm approved the execution venue for its order execution

¹³ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337 23.12.2015, p. 1).

policy;

- (c) name and capacity of the person or governance body of the investment firm that approved the selection of the execution venue;
 - (d) the classes of financial instruments for which the execution venue may be used;
 - (e) the types of transactions, including securities financing transactions, for which the execution venue may be used;
 - (f) whether the execution venue may be used for retail or professional clients;
 - (g) any other limitations of the execution venue;
 - (h) the type of access to the execution venue (direct or indirect).
3. An investment firm shall specify in its order execution policy the measures to ensure that client orders may only be executed on execution venues included in the list referred to in paragraph 2, unless the investment firm acts in accordance with Article 8 or all of the following conditions are met:
- (a) there are exceptional circumstances, including a fast decrease of liquidity or extreme price volatility relating to the financial instrument in the order to be executed;
 - (b) it is in the best interest of the client making the order.
4. Where an investment firm offers both the investment services of execution of orders on behalf of clients and reception and transmission of orders, the firm shall specify in its order execution policy how it complies with the obligation to act in the best interests of its clients in accordance with Article 24(1) of Directive 2014/65/EU when deciding whether or not to execute the order itself.

Article 4

Initial selection of execution venues for the order execution policy

1. For the purpose of establishing its order execution policy on the initial selection of execution venues, an investment firm shall take into account the characteristics and needs of the clients to which it provides investment services, including:
- (a) the factors referred to in Article 27(1) of Directive 2014/65/EU;
 - (b) the availability of certain order types;
 - (c) the investment amount;
 - (d) the typical frequency and value of orders from its clients, including:

- (i) for retail clients, at least two different order frequencies and values that are representative of the orders from the retail clients of the investment firm;
 - (ii) for professional clients, at least two different order frequencies and values that are representative of the professional clients of the investment firm, including, where applicable, the order size in relation to the average daily volume of the financial instrument;
- (e) that the investment firm shall only offer the service of order execution on behalf of clients for classes of financial instruments that are executed over the counter, including bespoke products, when the investment firm has the necessary arrangements and valuation systems in place to ensure systematic and robust checks of the fair price of such products;
- (f) for the criterion of costs, the fees and costs as referred to in Article 7(2)(b);
- (g) for the criterion of price:
- (i) for each class of financial instruments, an assessment of the execution quality that compares the execution prices of potential execution venues to be selected with a consolidated dataset of reference prices;
 - (ii) for financial instruments traded on third country trading venues, an assessment of the execution quality that compares the execution prices of potential execution venues to be selected with the prices obtained on the execution venue where the financial instrument was first admitted to trading or on the venue which the most relevant market in terms of liquidity;
 - (iii) for classes of instruments which are executed over the counter, including bespoke products, the ability of the investment firm to check the fairness of the price proposed to the client as referred to in Article 64(4) of Commission Delegated Regulation (EU) 2017/575;
2. For the purpose of taking into account the criterion of price in accordance with paragraph 1, point (g), an investment firm shall use the consolidated tape data or alternative datasets, provided the alternative dataset provides at least the same reference data quality as the consolidated tape data.

Article 5

Order routing criteria

1. Where a client order may be executed on two or more execution venues included in the list referred to in Article 3(2), an investment firm shall specify in its order execution policy the criteria and their relative importance for identifying the execution venue that obtains the best possible result for executing a client order in accordance with Article 27(1) of Directive 2014/65/EU.

2. The criteria referred to in paragraph 1 shall take into account at least the following:
 - (a) the class of financial instruments;
 - (b) whether the client is a retail or a professional client;
 - (c) all costs directly related to the execution of the order, including any fees and commissions charged by the investment firm itself;
 - (d) the real-time market data concerning the financial instrument, including the relevant prices offered by available execution venues and the likelihood of execution at the available execution venues at the intended execution time;
 - (e) the size and nature of the order;
 - (f) the historical data for the execution venues included in the list referred to in Article 3(2) where the order may be executed in relation to the financial instrument and the class of financial instrument or any sub-division of such class, including the following information:
 - (i) the quality of execution obtained;
 - (ii) the volumes of transactions executed;
 - (iii) the speed of execution;
 - (iv) the quality of the settlement process.
3. Where an investment firm uses an automatic order routing system, the investment firm shall specify in its order execution policy the main characteristics of the system and the arrangements in place to ensure that the automatic order routing system takes all sufficient steps to obtain the best possible result for their clients.
4. An investment firm shall not use an automatic order routing system if the firm is aware prior to the execution of an order that using the automatic order routing system may have an adverse impact on the execution quality.

Article 6

Monitoring of the execution quality

1. An investment firm shall have a monitoring procedure to observe the effectiveness of its order execution arrangements and order execution policy. The monitoring procedure shall assess at least the following factors:
 - (a) the price of execution taking into account a reference dataset;

- (b) fees and costs applicable to each of the execution venues, in accordance with Article 7(2)(b);
 - (c) speed of execution;
 - (d) the results of the criteria set out in (a) to (c) in accordance with the total consideration for retail clients and any alternative considerations for professional clients as set out in Article 27(1) of Directive 2014/65/EU.
2. The monitoring procedure referred to in paragraph 1 shall cover at least the following:
- (a) the periodicity of the monitoring, which shall be at least once every three months;
 - (b) the functioning of the investment firm's internal order execution arrangements and its impact on the obtained execution quality on the selected execution venues;
 - (c) an assessment of all transactions of the investment firm, or a representative sample, for each class of financial instruments;
 - (d) the thresholds to monitor execution quality for each class of financial instruments, including an acceptable deviation of the execution results from the reference data and a percentage of minimum traded volume that must meet the threshold.
3. For the purposes of acceptable deviation referred to in paragraph 2, point (d), for classes of instruments executed over the counter, including bespoke products:
- (a) the acceptable deviation from the reference data shall be monitored by checking the fairness of the price obtained for the client in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565;
 - (b) the execution prices obtained shall be compared with reference data based on market data used in the estimation of the price of such instruments and, where possible, similar or comparable instruments.
4. For the purposes of calculating the percentage of minimum traded volume that meets the threshold referred to in paragraph 2, point (d), the investment firm shall use data from a period of up to three months, or for a longer period of up to one year, provided the firm is able to demonstrate that a longer period is necessary to ensure sufficient trading data is available to determine execution performance.
5. For the purposes of the monitoring procedure referred to in paragraph 1, an investment firm shall use a reference dataset based on:
- (a) consolidated tape data;
 - (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;
 - (c) for classes of instruments which are executed over the counter, including bespoke

products, data provided by third parties, provided the investment firm has valuation systems in place to ensure systematic and robust checks of the fair price of such classes of instruments.

6. To comply with this Article, an investment firm may only rely on monitoring performed by a third party, such as an independent data provider or execution venue, under the condition that the investment firm ensures a thorough review of the monitoring process.

Article 7

Assessment of the effectiveness of the order execution policy

1. Based on the results of the monitoring of the execution quality in accordance with Article 6 of this Regulation, an investment firm shall assess the effectiveness of its order execution policy:
 - (a) at least annually;
 - (b) whenever the execution quality of the monitored transactions during a monitoring period breaches a predefined threshold;
 - (c) whenever there is a material change to the order execution policy or the factors taken into account in that policy.
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 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;
 - (b) the following costs and fees charged to the investment firm:
 - (i) trading and order execution fees;
 - (ii) cost of membership or connectivity;
 - (iii) costs and charges for clearing, settlement, custody and other administration services related to the choice of execution venue;
 - (c) the speed of execution;
 - (d) the functioning of its internal order execution arrangements and its impact on the obtained execution quality on the selected execution venues;
 - (e) market developments concerning execution venues and the impact on the firm's ability to obtain, for its client orders, the best possible result on a consistent basis;
 - (f) the emergence of new execution venues;

- (g) new functionalities, fee structures, transparency in price formation and levels of liquidity of execution venues, or execution services provided by execution venues;
3. The reference datasets referred to in paragraph 2(a) shall relate to the following information:
 - (a) for non-EU equity instruments, at least the execution venue where the instrument was first admitted to trading or the most relevant execution venue in terms of liquidity;
 - (b) for derivatives, the three execution venues that are most relevant in terms of liquidity, unless there are less than three execution venues, in which case, those execution venues;
 - (c) for classes of instruments which are executed over the counter, data which enables the investment firm to assess the fairness of the price obtained for the client in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565.
 4. For instruments for which there is no reliable reference data, such as bespoke OTC instruments, the reference datasets referred to in paragraph 2(a) shall constitute qualitative checks of the fairness of the price obtained for the client.
 5. Where the investment firm constructs the reference dataset for classes of instruments which are executed over the counter using data provided by third parties, the investment firm shall have the necessary arrangements and valuation systems to ensure systematic and robust checks of the fair price of such products.
 6. An investment firm shall update its order execution policy to correct any deficiencies identified in its assessment of effectiveness within a reasonable period based on the seriousness of the deficiency, but at the latest three months after the conclusion of the review.
 7. To comply with this Article, an investment firm may only rely on an assessment performed by a third party, such as an independent data provider or execution venue, provided that the analyses performed by the third party are representative for the client base of the investment firm with regard to the financial instruments and order sizes assessed.

Article 8

Client instruction

1. An investment firm shall set out in its order execution policy the arrangements for dealing appropriately with specific instructions from clients. The investment firm shall specify the impact of instructions on the criteria included in Article 4 of this Regulation and its ability to obtain the best possible result for the instructing client.
2. An investment firm shall define in its order execution policy how to differentiate between orders with and without specific client instructions. The investment firm shall at least describe that a specific client instruction involves either:

- (a) a choice of one option out of multiple options offered by the investment firm related to a part or aspect of the order;
 - (b) an instruction to the investment firm to handle the order in a different way than foreseen by the order execution policy.
3. Where an investment firm receives a specific instruction, the firm shall only treat the part or aspect of the order specified by the client as a specific client instruction. For all other parts and aspects of the order, an investment firm shall ensure its order execution policy provides that they are processed in the same way as orders without specific instructions.
4. Where an investment firm offers the client to choose an execution venue, the investment firm shall include the following details in its order execution policy:
- (a) an explanation of how the policy prevents inducing a client to choose a specific execution venue;
 - (b) if the commissions charged differ per execution venue, an explanation of how the investment firm complies with Article 64(3) and Article 66(5) of Commission Delegated Regulation (EU) 2017/565;
 - (c) that a warning will be provided to the client immediately prior to placing an order that the selection of an execution venue by the client may prevent the investment firm from obtaining the best possible result for the execution of the order;
 - (d) that clients are offered the possibility not to specify a specific execution venue, which means that the choice of the execution venue is the responsibility of the investment firm, including obtaining the best possible result for the execution of the order;
 - (e) that the order will be routed in accordance with the investment firm's order execution policy if the client does not choose the execution venue.
5. Pursuant to Article 27(4) of Directive 2014/65/EU, an investment firm shall only permit in its order execution policy to invite a client to select an execution venue when all the execution venues out of which the client could choose for the specific class of financial instruments are consistent with the order execution policy of the investment firm and thus allow them to obtain the best possible result.

Article 9

Dealing on own account when executing client orders

1. An investment firm shall specify in its order execution policy the arrangements to ensure that the investment firm only deals on own account when executing client orders where all of the following conditions are met:
- (a) the order execution policy of the investment firm expressly provides for the option of executing client orders on own account;

- (b) executing client orders on own account provides the best possible result for their clients.
2. An investment firm shall set out in its order execution policy the ways to adequately identify, prevent and manage the conflicts of interest related to dealing on own account when executing client orders.
 3. When dealing on own account in OTC products in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565, an investment firm shall set out in its order execution policy how the fairness of the price proposed to the client is ensured.
 4. An investment firm shall specify in its order execution policy how it assesses the consequences, including any additional risks, for clients when dealing on own account when executing their orders and how the firm complies with Article 66(3)(e) and Articles 68 to 70 of Commission Delegated Regulation (EU) 2017/565.

Article 10

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from X Month Year.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels.

For the Commission

The President
