



European Securities and  
Markets Authority

# Final Report

**Review of the MiFID II framework on best execution reports by investment firms**





European Securities and  
Markets Authority

16 May 2022  
ESMA35-43-3088



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# 1 Executive Summary

## Reasons for publication

MiFID II requires execution venues and investment firms to publish periodic data on the quality of execution and has required ESMA to adopt technical standards in this area. Relevant technical standards are known as RTS 27 (applicable to execution venues) and RTS 28 (applicable to investment firms).

In the application of the MiFID II framework, ESMA has become aware, also through contacts with stakeholders, of potential issues related to these best execution reporting requirements. The issues are primarily related to reporting by venues and to a lesser extent to firms' reports.

Additionally, Directive (EU) No. 2021/338 ("MiFID II Amending Directive") suspends the application of the RTS 27 reporting requirements for two years and requires the European Commission ("Commission") to comprehensively review the adequacy of the reporting requirements under Articles 27(3) and (6) of Directive (EU) No. 2014/65 ("MiFID II") and submit a report to the European Parliament and the Council.

In this light, and in the context of ESMA's mandate in accordance with Articles 1(5), 16a(1) and 29(2) of the ESMA founding regulation (Regulation (EU) No. 1095/2010), on 24 September 2021 ESMA published a Consultation Paper to seek stakeholders' technical input on ESMA's proposals for possible improvements to the regime which could be adopted in the future to ensure an effective and consistent level of regulation and supervision and enhance investor protection in this area. The consultation period closed on 23 December 2021. ESMA received 51 responses, 9 of which were confidential. The answers received are available on ESMA's website unless respondents requested otherwise.

During the period in which ESMA's consultation was open, the Commission published its legislative proposals for the review of the MiFID II/MiFIR framework. Those proposals include to delete both Article 27(3) (i.e., the Level 1 basis for the reporting obligation for venues) and Article 27(10)(a) MiFID II (i.e., the empowerment for ESMA to develop draft technical standards). In other words, the Commission's proposed deletions aim at abolishing reporting requirements for venues (RTS 27). In this light, ESMA decided to put on hold any on-going work related to RTS 27 and, consistently, this Final Report does not deal with this topic but only with best execution reporting requirements for investment firms. ESMA might reconsider this decision, should the Commission's proposal be amended as a result of negotiations at legislative level (so called Level 1) on the MiFID II/MiFIR Review.

ESMA sought the advice of the ESMA Securities and Markets Stakeholder Group (MSG) established under Regulation (EU) No 1095/2010.

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Section 2 provides an overview of the Final Report and, inter alia, sets out the policy rationale for best execution reporting by investment firms, also against the backdrop of a possible

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future consolidated tape. The main component of this section are proposals through which best execution reports by investment firms could be improved. In particular, those suggestions aim at (i) enhancing the RTS 28 reports' quality of information (inter alia, by proposing to delete a specific reporting obligation for firms on the features of executed orders which has not proven effective under the current reporting framework); and at (ii) facilitating the use of RTS 28 reports (e.g. via the suggestion that firms are required to publish the reports' quantitative information in the simple CSV format to facilitate end-users' access and comparison of this data). It should also be mentioned that some proposals in this paper concern potential changes to the legislation (Article 27(6) of MiFID II - Level 1). As a consequence, subsequent potential changes to RTS 28 (so called Level 2) could only be considered against any future changes of the Level 1.

Section 3 consists of two Annexes. Annex I contains the feedback statement and Annex II includes an outlook on potential costs and benefits.

### **Next Steps**

The present Final Report, presenting ESMA's views, proposals and opinions on potential improvements of the regime, will be shared with the European Commission to contribute to the Commission's analysis on the adequacy of the MiFID II best execution reporting obligations and to any subsequent determinations on the retention of the regime and how it could possibly change.

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## 2 Overview

### Background

#### *Legal background*

1. Article 27 of Directive 2014/65/EU (“MiFID II”) sets out best execution requirements which aim at ensuring that firms take all sufficient steps to obtain, when executing client orders, the ‘best possible result’ for their clients. The best execution framework also includes reporting obligations for execution venues (“venues”) (Article 27(3) of MiFID II) and for investment firms (“firms”) (Article 27(6) of MiFID II).
2. Article 27(10)(a) of MiFID II requires ESMA to develop draft regulatory standards to determine the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with Article 27(3), taking into account the type of execution venue and the type of financial instrument concerned. Additionally, Article 27(10)(b) of MiFID II requires ESMA to develop draft regulatory technical standards to determine the content and the format of information to be published by investment firms in accordance with Article 27(6). On the basis of these requirements, ESMA has adopted the relevant technical standards which are commonly known as RTS 27<sup>1</sup> and RTS 28<sup>2</sup> and lay down the reporting requirements to foster achieving the aforementioned best execution objectives. In particular:
  - under RTS 27 venues<sup>3</sup> have to provide quarterly comprehensive sets of relevant data to allow investment firms, professional investors and the public to assess and understand the quality of execution achieved on the venue; and
  - under RTS 28 firms must publish annual reports to enable the public and investors to evaluate the quality of a firm’s execution practices.
3. However, in the course of the application of MiFID II framework, issues with the best execution reporting requirements have been identified, for example in media reports and in ESMA’s exchange with stakeholders. The issues are primarily related to RTS 27 (e.g. relating to venues’ publication of lengthy reports and market participants’ limited use of this information for execution quality assessments) and to lesser extent to RTS 28 (e.g. limited use of reported information).
4. On 24 July 2020, the Commission adopted the Capital Markets Recovery Package (“Recovery Package”) to support the recovery from the severe economic shock caused by the COVID-19 pandemic. The Recovery Package contains proposals for amendments to several regulatory frameworks in financial services, including the MiFID II rules.<sup>4</sup> Those

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<sup>1</sup> Commission Delegated Regulation 2017/575/EU (“RTS 27”): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0575&from=EN>

<sup>2</sup> Commission Delegated Regulation 2017/576/EU (“RTS 28”): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0576&from=EN>

<sup>3</sup> Execution venues include trading venues, systematic internalisers, market makers and other liquidity providers (Article 1 RTS 27, in line with the relevant best execution requirements in the MiFID II delegated regulation).

<sup>4</sup> Apart from the proposed changes to MiFID II, the EC’s Capital Market Recovery Package also encompasses proposals of



suggested amendments focus on changes in specific areas of MiFID II, such as best execution.

5. On 26 February 2021, Directive 2021/338/EU (“MiFID II Amending Directive”) was published and entered into force on the day following that of its publication.<sup>5</sup>
6. Recital 9 of the MiFID II Amending Directive sets out, inter alia that RTS 27 reports contain large amounts of detailed data and do not enable investors and other users to make meaningful comparisons regarding venues’ execution quality. With regards to the MiFID II best execution rules laid out in RTS 27 and RTS 28, the MiFID II Amending Directive encompasses the following changes:
  - a) The periodic reporting requirement required by Article 27(3) of MiFID II (which is the basis for RTS 27) shall not apply for two years following the entry into force of the Amending Directive (Article 1(6) of the MiFID II Amending Directive), and;
  - b) the Commission shall comprehensively review the adequacy of the reporting requirements of Articles 27(3) and (6) of MiFID II and submit a report to the European Parliament and the Council (Articles 1(6) and (6a) of the MiFID II Amending Directive).
7. On 25 November 2021, the Commission published its legislative proposals for the review of the MiFID II/MiFIR framework.<sup>6</sup> Those proposals include a consolidated tape (CT) to disclose post-trade information regarding all financial instruments. According to the Commission the CT information can be used for proving best execution and consequently, the Commission also suggests deleting both Article 27(3) (reporting obligation for venues) and Article 27(10)(a) MiFID II (the empowerment for ESMA to develop draft technical standards).<sup>7</sup> In other words, those proposed deletions aim at abolishing reporting requirements for venues (RTS 27).
8. As a result of this Commission’s legislative proposal, which is currently negotiated in the context of the ordinary legislative procedure and which has a potential direct impact on RTS 27, the present Final report will only deal with reporting obligations for firms (RTS 28).

### *Policy background*

9. The Directive on Markets in Financial Instruments (“MiFID I”) did not oblige investment firms (“firms”) to disclose any information about the execution quality actually achieved in their execution of client orders. Consequently, under MiFID I, firms’ information provided

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amendments to the Prospectus Regulation and the Securitisation Regulation, see also:

[https://ec.europa.eu/info/publications/200722-proposal-capital-markets-recovery\\_en](https://ec.europa.eu/info/publications/200722-proposal-capital-markets-recovery_en)

<sup>5</sup> Directive 2021/338/EU (“MiFID II Amending Directive”): <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L0338&qid=1615898803540&from=en>

<sup>6</sup> See the Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0726&from=EN>, and the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0727&from=EN>

<sup>7</sup> See Article 1(4) of the European Commission’s proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments.

to clients relating to their execution policy had often been very generic. This information did not enable clients to understand how firms executed orders and how they ensured that they executed orders on terms most favourable to their clients.

10. In order to enhance investor protection, the MiFID II framework sets out the obligation for firms to publish annual reports on the quality of execution. This MiFID II requirement has been implemented through RTS 28. This requirement intends to address the lack of publicly available information on execution quality under MiFID I, to enable the public and investors to evaluate firms' efforts to obtain best execution in executing client orders (for example, by allowing to compare a firm's actual execution practices with its execution policy). Thus, this type of reporting allows informing clients on the execution venues frequently selected by firms and on firms' efforts to obtain execution quality. Accordingly, RTS 28 reports also aim to support investors and the public in choosing the most suitable firm for the execution of their orders and in achieving better execution results.
11. While market participants and national competent authorities (NCAs) have observed shortcomings in the current RTS 28 reporting regime and a low use of this information for assessing the execution quality obtained by firms, the rationale indicated above continues to apply. Indeed, in ESMA's view, a requirement for firms to periodically report to the public on how they achieved best execution for their clients over a given period is an important pillar of a well-functioning best execution regime.
12. Moreover, the European Commission's ("Commission"), recent proposal, as part of the MiFID II/MiFIR Review, to establish a CT for all financial instruments has the potential to further improve the information on firms' execution quality included in RTS 28 reports. According to the Commission, the post-trade information regarding all transactions in financial instruments to be provided by the future CT can be used by firms as a means to assist in supporting the proof of best execution (in relation to prices). In ESMA's view, firms' use of CT data to obtain best execution can be included in RTS 28 reports (provided the co-legislators agree upon establishing a CT).
13. As firms are required to achieve best execution in the execution of their client orders, they must disclose information to their clients about the prices at which they bought and sold financial instruments in comparison to prices and volumes provided on different venues at the moment when the trade was executed. However, currently the data about the available liquidity on different venues within the Single Market is often fragmented and costly to acquire, which hampers firms' capacity to choose the most advantageous venue to execute their client orders. In order to address this shortcoming, the future CT aims at providing standardised information on prices and liquidity available in all EU trading markets to enable firms to choose the best venue to execute their client orders. Since RTS 28 reports disclose cost-free information about firms' obtained execution quality, those reports can potentially become an important channel to disclose the results of firms' execution practices (based on the future CT data) to clients. Thereby, RTS 28 reports can enable end-users to account for firms' (potentially) improved execution practices (resulting from the CT data) when choosing the most suitable firm for the execution of their orders.





## Public consultation

14. On 24 September 2021, ESMA published a Consultation Paper (CP)<sup>8</sup> which identified reasons for the shortcomings of the RTS 28 (as well as RTS 27) reporting framework and proposed possible improvements to the regime which could be adopted in the future to ensure an effective and a consistent level of regulation and supervision and enhance investor protection in this area. The consultation aimed at receiving technical input from market participants on how a reviewed best execution reporting regime could look like and closed on 23 December 2021.
15. ESMA received 51 responses, 9 of which on a confidential basis. The answers received are available on ESMA's website unless respondents requested otherwise.<sup>9</sup>

## Analysis following the consultation

### RTS 28

16. A majority of respondents pointed to the low use of the current RTS 28 reports by market participants. This stakeholder feedback is in line with ESMA's analysis conducted in the follow-up of the implementation of the MiFID II framework and which is also included in the CP (for a summary of stakeholders' comments to ESMA's proposals for a possible improvement of the RTS 28 reporting framework and for ESMA's respective responses see Annex I).
17. ESMA acknowledges the comments received and agrees that there is room for improvement in the current RTS 28 reporting framework and seems currently to be only used to a limited extent by market participants (as also set out in the analysis chapter of the CP on the Review of the MiFID II framework on best execution reports). However, ESMA also believes that RTS 28 reporting framework could be improved, so that RTS 28 reporting can help to better inform investors in their choice of a firm for their order execution. Indeed, ESMA views a periodic reporting requirement for firms on how they achieved best execution as an important pillar of a well-functioning best execution framework that should be retained.

### *Required legislative amendment for ESMA's proposed RTS 28 changes to come into effect*

18. ESMA highlights that a change of the scope of Article 27(6) of MiFID II would be needed to enable improvements to the RTS 28 reporting regime.
19. In particular this change should aim at clarifying that reporting requirements also apply to firms that provide RTO services and to portfolio managers that transmit their decisions to deal to other firms for execution. Moreover, following the amendment of Article 27(6) MiFID, necessary adaptations of the MiFID II Delegated Regulation 2017/565 (Article 65) would be needed to avoid legal unclarity.

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<sup>8</sup> ESMA35-43-2836, [https://www.esma.europa.eu/sites/default/files/library/esma35-43-2836\\_cp\\_-\\_best\\_execution\\_reports.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-2836_cp_-_best_execution_reports.pdf)

<sup>9</sup> ESMA consultation on the review of the MiFID II framework on best execution reports: <https://www.esma.europa.eu/press-news/consultations/consultation-review-mifid-ii-framework-best-execution-reports>

*ESMA's approach taken in the elaboration of proposals for the RTS 28 reporting regime*

20. ESMA emphasises that, pending the Commission's assessment of the framework in this area, ESMA's work has not aimed at producing formal proposals for a new RTS 28 at this stage. Instead, ESMA has developed suggestions for possible improvements of the reporting regime in the future, in a way that may assist the Commission, on the basis of these concrete proposals, to deliver its Report on the adequacy of reporting requirements under Article 27(6) of MiFID II required under the above mentioned Directive 2021/338/EU.

21. Accordingly, ESMA's work has focused on assessing ways to:

- (i) enhance the RTS 28 reports' quality of information and
- (ii) facilitate their use, particularly via the following proposals (in comparison to the current RTS 28 framework).

22. With regards to enhancing the quality of information contained in RTS 28 reports the following proposals should be mentioned:

- The proposal to delete the obligation to report, as part of the list of top five venues used by a firm, the percentage of the executed orders that were passive and aggressive orders, as this information provided only little added value in revealing firms' execution quality.
- The proposal to require firms to explicitly confirm in their summaries of execution quality, if they do not report on the required parameters. Additionally, it is proposed to require firms to briefly explain why they did not provide any information about the respective parameter of execution quality<sup>10</sup>.

23. With a view to make RTS 28 reports more user friendly, the following potential changes should be mentioned:

- The requirement to publish the quantitative information of RTS 28 reports in the CSV format in order to facilitate end-users' access and comparison of this data (e.g. enabling to analyse the data of the top five lists of several firms per class of financial instruments, via everyday life spreadsheet software).
- The clarification of the reporting obligations both for (i) firms executing client orders and (ii) for firms providing the services of reception and transmission ("RTO"). So, ESMA proposes to require firms to disclose, for example, separate top five tables in terms of

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<sup>10</sup> Under the current RTS 28 regime, NCAs have observed some cases, in which firms did not provide any information in their RTS 28 report's summary of execution quality on certain parameters. For example, if a firm did not have any close links and common ownerships to execution venues they use for client order execution, they did not report on this required item. From a policy perspective, the lack of certain information complicates the understanding of the respective RTS 28 reports and affects their quality. Consequently, the abovementioned proposal aims at ensuring that if firms that do not report on a parameter of execution quality, they must briefly explain why they did not provide this information, to ensure the report's comprehensiveness and facilitate comparison of those documents.

trading volumes for executed orders or decisions to deal as well as for orders or decisions to deal which those firms transmitted to third party entities for execution.

24. In light of certain observed shortcomings in the publication of RTS 28 reports<sup>11</sup> and to enable end-users to benefit from the aforementioned proposals to enhance quality and user-friendliness of such reports, ESMA suggests specifying the requirements for the publication of such reports (which is not the case for the current respective RTS 28 provisions). ESMA proposes to require firms to publish RTS 28 reports on a website in an easily identifiable location without access limitations or other restrictions. Those reports should also be published on a standalone basis and should remain freely accessible for a minimum period of two years from the initial date of publication. Firms that do not have any website, should inform their clients that they provide them with RTS 28 reports upon request and free of charge. RTS 28 reports should remain accessible on request, for a minimum period of two years from the initial date of issuance.
25. The CP also mentioned the need to require disclosure of information on received payments for order flow (PFOF) in the summary of the firms' obtained execution quality (i.e., to publish the aggregated amount of any PFOF received, per venue of the top five list, and a breakdown of the average amount of received PFOF per financial instrument) in order to assist end-users in the choice of the most suitable firm for their order execution. ESMA notes that, at this stage, this proposal would no longer be relevant in light of the Commission's legislative proposal to ban PFOF, pending discussions in the context of the ordinary legislative procedure (Article 1(26) of the Commission proposal for a regulation amending Regulation (EU) No 600/2014, mentioned above). Should the result of these discussions be different from the Commission's legislative proposal, ESMA will reassess the relevance of its aforementioned proposal in order to possibly require firms to disclose information on received PFOF, in the context of any potential future work related to the best execution reporting requirements.

#### *Role of RTS 28 reporting in light of the future CT*

26. During the consultation for this FR, the Commission has published its proposals for the Review of MiFID II/MiFIR which include the suggestion to establish a CT, expected to provide post-trade information regarding transactions in financial instruments. In line with its position taken in the CP as to the need to take into account any future legislation related to a CT, ESMA is of the opinion that the data disclosed by the (proposed) CT could improve the information of RTS 28 reports about firms' obtained execution quality, to the benefit of investors (see also paragraph 13 of this Report).
27. More specifically, ESMA also believes that further information about firms' execution quality, based on their use of CT data, could be disclosed via RTS 28 reports. Such disclosure could encompass, inter alia, to what extent the firm (issuing the report) has obtained a better price than the "reference price" at the time of order execution (published by the CT) in the execution of client orders of a certain category of financial instruments

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<sup>11</sup> For observations related to certain firms' publication practices which hamper the access to RTS 28 reports see paragraphs 17, 19 and 20 in the ESMA Consultation Paper on the Review of the MiFID II framework on best execution reports.



(e.g. shares of the highest tick size liquidity band).<sup>12</sup> This may help investors to make a better-informed choice of the firm to execute their orders and to achieve better investment results. Hence, to provide for uniform best execution analyses, it should be considered if the use of the CT reference price should be made mandatory in the best execution analysis of RTS 28.

28. Additionally, ESMA is of the opinion that consumer testing of the presentation of key RTS 28 information that complement possible future technical amendments of this reporting framework (e.g. related to the use of CT data), can further enhance market participants' use of such (potentially) reviewed RTS 28 reports. To this end, ESMA proposes that such potential consumer testing includes approaches to facilitate the understanding of the disclosed RTS 28 information by consumers, for example, by referring to graphical elements, disclosure by layers of information and possible insights gained from behavioural economics to foster investor protection.

### **Further content**

29. A summary of stakeholders' comments to ESMA's proposals for a possible improvement of the RTS 28 reporting framework and of ESMA's respective responses are included in Annex I of this FR.

30. Additionally, an outlook on potential costs and benefits of the proposed possible improvements for RTS 28 is included in Annex II.

### **Next steps**

31. ESMA will send this Final Report to the European Commission. Pending the Commission's reports required by Directive 2021/338, this Final Report will not lead to any immediate change of the existing RTS 28 which currently regulates best execution reporting by investment firms.

32. Therefore, this Final Report only aims at providing initial support to the Commission in its assessment of the adequacy of the best execution reporting obligation for investment firms, and any subsequent technical work to shape a well-functioning reporting regime.

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<sup>12</sup> Such possible additional price-related information disclosure in RTS 28 reports would be without prejudice to Article 27(1) of MiFID II pursuant to which firms are required to achieve the 'best possible result' for their clients when executing client orders, accounting not only for price information, but also for other factors, such as costs, speed and likelihood of execution.

## 3 Annexes

### 3.1 Annex I: Feedback from stakeholders

#### RTS 28

##### *Stakeholders' general views on ESMA's proposals for a possible review of RTS 28*

33. A majority of respondents noted the low use of the current RTS 28 reports by market participants. However, in particular, on how to address the current RTS 28 reporting regime in a (future) review, diverging comments were raised:

- Some respondents, including one consumer association, support ESMA's proposals for amending certain reporting requirements for firms on execution quality under RTS 28. Some of those respondents noted that ESMA's suggestions can help investors to make better informed investment decisions, for example, by facilitating the comparison of execution quality between firms. Additionally, a few respondents suggested to (i) completely restructure the RTS 28 reporting obligations to provide a document which focuses on disclosing, inter alia, conflicts of interest (including information of trading with affiliates), (ii) to report in the top five list of firms the counterparty where the trade is actually executed to better inform about firms' chosen trading partners and the concentration of order execution flows, or (iii) to organise the top five list by undertaken services instead of the (current) disclosure of investment firm entities.
- In contrast, some respondents do not endorse ESMA's proposals for amending firms' RTS 28 reporting obligations and propose to delete the RTS 28 reporting requirement. Moreover, in the view of some of those respondents, the added value of the information disclosed via the RTS 28 reports does not justify the resources deployed for their production. Some of those respondents also noted that ESMA's proposals for amendments to the RTS 28 reporting requirements may not significantly improve the quality of the reports, as some suggestions (e.g. the disclosure of RTS 28 data in machine-readable format) will require additional investments by firms.
- A few other respondents focused on noting the low use of the current RTS 28 reports without providing specific views on how the current RTS 28 framework should be addressed in a future review.

34. ESMA acknowledges the comments received and agrees that there is room for improvement of the current RTS 28 reporting framework and that it is only used to a limited extent by market participants (as also set out in the analysis chapter of the CP on the Review of the MiFID II framework on best execution reports). However, ESMA also believes that the current reporting regime can be improved so RTS 28 reporting can help to better inform investors in their choice of a firm for their order execution. Indeed, ESMA views a periodic reporting requirement for firms on how they achieved best execution as an indispensable pillar of a well-functioning best execution framework that should therefore be retained. In order to facilitate the implementation of ESMA's proposed changes to the RTS 28 reporting requirements for firms, ESMA suggests further clarifying that similar



reporting requirements also apply to firms that provide RTO services and to portfolio managers that transmit decisions to deal for execution.

#### *Disclosure of information related to Payment for Order Flow (PFOF)*

35. Some respondents, including the consumer association which replied to the consultation, supported ESMA's proposal to require firms to disclose in their RTS 28 reports information related to any payments for order flow (PFOF) received in the summary on execution quality. This would enable investors to make better informed decisions when choosing a firm to execute their orders.
36. In contrast, some respondents expressed the view that the disclosure of this information is only of very limited informative value for individual clients. A few of those respondents also noted that such a disclosure would not have any significant impact, as PFOF-based order execution practices are not common in their jurisdictions.
37. As highlighted in its public statement on PFOF<sup>13</sup>, ESMA believes that PFOF raises serious investor protection concerns and considers that in most cases it is unlikely that PFOF could be compatible with the MiFID II framework. ESMA acknowledges that currently PFOF-related execution practices have only been observed in some jurisdictions. However, disclosing such information related to PFOF can effectively contribute to enable investors to choose the most suitable firms for the execution of their orders.
38. ESMA notes that its proposals on PFOF should no longer be relevant in light of the Commission's proposal to ban PFOF, currently discussed in the context of the ordinary legislative procedure. As a consequence, ESMA refrains from developing any proposal on this topic at this stage. However, in case those discussions led to a different result compared to the Commission's proposal to ban PFOF, ESMA will be available to develop technical proposals to require firms to disclose PFOF-related information in any future work related to the best execution reporting framework.

#### *Other technical proposals related to the RTS 28 reporting framework*

39. Moreover, respondents provided comments on a set of rather technical amendments in relation to RTS 28 reporting requirements proposed by ESMA in the CP.
40. Only supporting responses emerged for the following two proposals:
  - Some respondents agree with ESMA's proposal to delete RTS 28 reporting information on passive and aggressive orders; and
  - a few respondents endorse ESMA's proposed obligation for firms to explicitly confirm in their execution quality summaries, if they do not disclose information about any of the required parameters, and to briefly explain the reason for this absence of reporting.

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<sup>13</sup> ESMA35-43-2749: [https://www.esma.europa.eu/sites/default/files/library/esma35-43-2749\\_esma\\_public\\_statement\\_pfof\\_and\\_zero-commission\\_brokers.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-2749_esma_public_statement_pfof_and_zero-commission_brokers.pdf)



41. Relating to the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regards to the suggested methodology for the reporting on equity instruments, some respondents agreed with the (current RTS 28) classification of instruments. In contrast, some respondents disagreed with this current classification and noted that

- the classification by tick size liquidity bands is not relevant; and that
- the comprehensive classification per ISIN/financial instrument is required instead, to have a more precise classification.

Nevertheless, only few respondents provided alternative proposals (to the classification of financial instruments in the current RTS 28) and if so, those proposals were rather short and of high-level character, inter alia, the suggestion to classify listed securities by the relative liquidity (ie, the ratio between total transaction size and average daily volume). However, those few respondents also noted that a more detailed assessment of the current classification would be needed to develop their proposals further.

42. ESMA welcomes respondents' support for its suggested deletion of the RTS 28 reporting obligation related to the information on passive and aggressive orders and for ESMA's suggestion of confirmation and explanation if firms do not disclose required information in their execution quality summaries. ESMA is aware that modifying the classification of financial instruments of the RTS 28 reporting framework would require significant efforts by firms to be implemented. Moreover, ESMA notes that respondents' proposals for alternative categorisations were limited. Consequently, ESMA agrees with maintaining the current classification of financial instruments for RTS 28 reporting (as included in Annex I of the current RTS 28).

43. Furthermore, some respondents endorse ESMA's proposal to publish separate top five execution venue information (in terms of trading volumes) for, on the one hand, executed client orders/decisions to deal and on the other hand, client orders/decisions to deal transmitted to a third-party entity for execution. However, a few respondents were of the view that such separate reporting will not significantly improve the currently reported RTS 28 information.

44. ESMA believes that the requirement for firms to publish separate top five information for executed client orders/decisions to deal and client orders/decisions to deal routed to a third-party for execution facilitates the understanding of RTS 28 report information and contributes to enable investors to make better informed decision on which firm to choose for their order execution. ESMA is also of the view that firms should be provided with an additional period of 12 months to foster the implementation of the proposed amendments to the RTS 28 reporting framework and suggests to amend the relevant provision accordingly.

45. The proposal to disclose the RTS 28 reports in the CSV format was supported by some respondents, including one consumer association which replied to the consultation, who noted that publishing the reports in this format enhances the accessibility of the reports, especially for retail investors. This included the request to clarify that firms should only be



required to publish quantitative RTS 28-related information in the CSV format. Conversely, in the view of a few respondents, this proposed amendment of data format would cause significant additional costs in terms of IT-related investments.

46. More divergent comments emerged in reaction to ESMA's proposal that RTS 28 reports should be published via a European Single Access Point (ESAP). While a few respondents supported this suggestion, in the view of some other respondents disclosing RTS 28 reports through ESAP creates an additional disproportionate administrative burden for firms. Additionally, a few respondents focus their comments on the interval of RTS 28 reporting and suggest that firms should be obliged to quarterly (instead of currently annually) publish RTS 28 reports to provide market participants with more up-to-date information on firms' obtained execution quality.
47. ESMA believes that requiring firms to publish RTS 28 information based on the reporting framework set out in the RTS and in the machine-readable and easily usable CSV format (in addition to the publication in electronic format that is clear and easily readable, such as PDF) will contribute to significantly facilitating access and comparison of those reports for market participants. Moreover, ESMA agrees with the need to clarify that firms are only obliged to publish quantitative RTS 28 data in the CSV format and proposes to amend the relevant provision accordingly. In ESMA's view the publication of RTS 28 reports via ESAP can also facilitate access to those reports. However, ESMA is also aware that the co-legislators are currently negotiating the Level 1 provisions for ESAP, which may impact a (potential) future publication of RTS 28 reports.



## 3.2 Annex II: Outlook on potential costs and benefits

48. In light of the responses received to the CP, the Annex on potential costs and benefits has been updated. Respondents provided some qualitative information on the level of resources that would be required to implement the suggested changes to the best execution reporting requirements for firms and also very limited quantitative estimations were illustrated. However, the data presented were too narrow and incomplete to be considered fully representative of firms' RTS 28 reporting.

### *The impact of the proposals to enhance the adequacy of the best execution reporting requirements for firms*

49. Pursuant to Article 27 of MiFID II investment firms are required to achieve the 'best possible result' for their clients when executing client orders, accounting for factors, such as price, costs and likelihood of execution. Such firms are also obliged to publish annually for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders (in the preceding year) and information on the execution quality obtained.

50. The objective of the best execution reporting obligation by firms continues to be justified. However, the existing regime has proven partially burdensome and not entirely able to achieve the intended objectives, which is reflected in market participants' low use of the current RTS 28 reports.

51. Therefore, ESMA's proposals to enhance the adequacy of the current reporting regime aim at enhancing the reports' quality of information and facilitating their use (see paragraphs 21-23 and 26-28 for more detailed information).

### *Benefits*

52. The suggestions to amend the RTS 28 framework can contribute to more user-friendly reports, to support the public and market participants in making informed choices when choosing a firm for the execution of their orders.

53. Some respondents provided comments on the benefits of the proposals suggested by ESMA. Some of those, including one consumer association which replied to the consultation, highlighted that ESMA's proposals related to the RTS 28 reporting framework would enhance access to those reports and would make them more useful, for example, for average non-professional investors.

### *Costs*

54. Firms currently already have to provide the respective RTS 28 reports. The proposals in this paper aim at standardising and making reporting obligations, to the extent possible, less burdensome. Therefore, the proposed more focused requirements for RTS 28 reports should enable firms in the medium- and long-term to provide them at lower costs than under the current reporting framework. Furthermore, the information required to elaborate the RTS 28 reports should be readily available to firms.



55. Some respondents commented on the costs that would result from implementing ESMA's proposals in the current RTS 28 reporting framework. In the view of those respondents, those expenses (such as one-off costs for firms due to required IT investments) would exceed the benefits achieved by ESMA's proposed amendments to the RTS 28 reporting regime.

### *Conclusions*

56. Considering what has been illustrated above, ESMA acknowledges the costs which implementing those proposals may cause for firms. However, ESMA believes that its proposals will contribute to improve end-users' available information on the execution quality of firms and thereby foster investor protection. In this light, the overall associated costs are proportionate to the benefits and justified by the objectives described above.