

Circular addressed to investment firms on the regulatory requirements, in the context of best execution, emanating from Directive 2014/65/EU (“MIFID II”) and the relative Regulatory Technical Standard, namely, Commission Delegated Regulation (EU) 2017/576 (“RTS 28”)

1.0 Introduction

[MiFID II](#) has amongst other measures strengthened best execution regulations for investment firms, through the introduction of new trade and transaction reporting obligations, seeking to make execution arrangements for the buying and selling of financial instruments more transparent. In this regard, reference is being made to Article 27 of MIFID II which details the obligation of investment firms to execute orders on terms most favourable to the client. This article is being supported by [RTS 28](#). This RTS is binding in its entirety and directly applicable in all Member States.

In order to provide guidelines to investment firms and to ensure the consistent and effective day-to-day application of these rules, ESMA has collected and addressed questions from stakeholders and compiled these within a document titled [ESMA Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics](#) (“Q&A”). ESMA will continue to develop this Question and Answers document on investor protection topics under MiFID II, by adding questions and answers to the topics already covered and introducing new sections for other MiFID II investor protection areas not yet addressed in this Question and Answers document.

The purpose of this circular is to bring to the investment firms’ attention the salient features of RTS 28 as well as to the specific ESMA Q&As. Furthermore, as detailed hereunder investment firms will be required to provide an update on the implementation of the requirements of the RTS 28.

2.0 Reporting obligations of the Delegated Regulation

MiFID II introduced requirements for the mandatory publication of execution data by investment firms to afford investors better insight into the quality of execution venues and to outline the top five venues used by investment firms for execution of their clients' orders. Such publications allow investment firms to demonstrate compliance with their execution policy.

In this context, RTS 28 lays down rules on the content and the format of information to be published by investment firms on an annual basis.

I. Publication of Reports

Article 1 of RTS 28 clearly prescribes that investment firms are required to publish information on an annual basis.

The response to Question 6 of section 1, titled Best Execution, within ESMA's Q&A, clarifies that the first annual report is to be published by the end of the fourth month of the calendar year during which the legislation enters into force (that is; April 2018). ESMA has acknowledged that for the first set of reports, investment firms may not be able to fully report on information which is not available or applicable in relation to the preceding year and thus the first report might not contain the level of granularity that subsequent reports will contain. The first RTS 28 Report should have been completed on a best efforts basis.

Action Required

Investment Firms should have by now actively engaged in the preparation and publication of the first report. In this respect investment firms are required to provide the Authority with an update on the publication stage of this report and a link to where such reports are being uploaded on the Company's website by not later than Friday, 30th November 2018. This update should reach the Conduct Supervisory Unit on offsiteinv@mfsa.com.mt

II. Location of Publication of Reports

As stipulated within Article 4 of the RTS 28, investment firms are required to publish information on their website. Reports must be in an electronic format and available for downloading by the public. The quantitative element of the RTS 28 Report must be in machine-readable format (for example a CSV file).

As detailed in the reply to Question 4 of section 1 of ESMA's Q&A, firms are required to maintain the information on their websites for a minimum period of two years following publication

III. Content of Reports

Each compiled report must include a quantitative and a qualitative section.

A. The quantitative section of the report must include:

A list of the top five execution venues compiled in terms of trading volumes for all executed client orders.

In line with this requirement, investment firms are required to gather data relating to execution, for each sub-class of MiFID financial instruments in terms of trading volumes with different counterparties and on different venues. Firms will have to map their own financial instruments categories according to the list of sub-classes, as defined in Annex I of the RTS 28.

Furthermore, investment firms are required to separate execution into two categories being direct order execution or transmission of order for execution to another investment firm (e.g. to a broker). If an investment firm provides both services, MiFID II requires investment firms to publish two separate top five execution venues reports.

Firms can opt to compile the top 5 execution venues statistics themselves or else outsource the calculation to an external service provider.

Information regarding retail clients shall be published in the format set out in Table 1 of Annex II of the RTS 28 whilst information regarding professional clients shall be published in the format set out in Table 2 of Annex II of the RTS 28.

The transactions with eligible counterparties have to be entirely eliminated from the reports.

Irrespective of the table used, the contents need to encompass execution venue name and identifier, the information on the total volume and the number in percentage of all client orders executed on that execution venue in that class of financial instruments as well as confirmation of whether the investment firm has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

In addition to the above, the following need to be completed:

- class of financial instruments covered;
- percentage of passive and aggressive orders¹; and
- percentage of directed orders.

¹ A “passive” order is one which adds liquidity to the relevant order book (e.g. submitting an order to an exchange which does not match an existing resting order); whereas an “aggressive” order is one which removes existing liquidity from the order book (e.g. submitting an order to an exchange which is immediately matched with an existing resting order).

B. The qualitative section of the report must include:

Data and summary of the analysis and conclusions drawn from the investment firm's detailed monitoring of execution quality obtained on execution venues or, as the case may be, from brokers in the previous year for each class of financial instrument. This will need to include analysis explaining why the firm considers that the quality of executions obtained from the top five brokers and venues listed in the quantitative section of the report, justify the relevant brokers'/ venues' status as part of the top five. The qualitative element should also disclose the existence, and details, of any links or conflicts of interests between the firm and the relevant venues/brokers in the top five.

Article 3 of the RTS 28 lays down the content of the information on the top 5 execution venues and the quality of execution. There is a prescribed template for the quantitative disclosure, as set out at [Annex II](#) the RTS 28. It is mandatory for firms to use this form of template for the quantitative disclosure. There is no prescribed format for the qualitative disclosure, and so firms may choose their own template.

3.0 Conclusion

MiFID II provisions relating to best execution reporting aim to give more visibility to clients into the firms' processes of venue selection and monitoring. Such reports provide clients with greater visibility into the costs associated with execution venues that firms use.

In this regard, investment firms require systems for the collection and publication of execution data, in order to assist with monitoring and review procedures to evidence compliance with best execution obligations.

Any queries or requests for clarifications in relation to this Circular are to be directed to the undersigned and Ms. Charlene Musu' (cmusu@mfsa.com.mt).

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**Communications Unit
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7 November 2018**