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The European Securities and Markets Authority (“ESMA”) Clarifies Certain Best Execution Reporting Requirements under MiFID II

Regulatory Requirements

Article 27(6) of MiFID II requires Investment Firms to make public the top five execution venues where they executed client orders, in the preceding year and information on the quality of execution obtained. This article is supplemented by Regulatory Technical Standard 28 (“RTS 28”), which further specifies the content and format of this information (“RTS 28 reports”).

The MFSA has on 21 December 2022 issued a [Circular](#) covering ESMA’s [Public Statement](#), which was issued on 14 December 2022 and covered the European Commission’s proposal regarding the review of the Markets in Financial Instruments Regulation (“MiFIR”) and MiFID II, where in particular, such a proposal included the deletion of the RTS 27 reporting obligation on execution venues.

Reporting Requirements

Following ESMA’s Public Statement released on 14 December 2022, ESMA has on 13 February 2024 issued a new [Public Statement](#).

This Public Statement is adopted in the context of the agreement on the MiFID II/MiFIR review agreed between the Council of the European Union and the European Parliament. The published statement clarified that under the reviewed MiFID II/MiFIR framework, Investment Firms are no longer required to annually report detailed information on trading venues and execution quality through RTS 28 reports.

Originally RTS 28 reports were intended to provide investors with information on the execution quality. However, evidence and feedback from stakeholders have shown that those reports are hardly read and do not enable investors or other users of those reports to make meaningful comparisons based on the information provided in them.

Moving Forward

After the date of entry into force of the new Directive amending MiFID II, Member States will have 18 months to transpose it into national law. Consequently, despite the deletion of the RTS 28 reporting obligation, Investment Firms may still need to make public these reports in 2024 and until the date of transposition of the directive (Recital 8 of the amending Directive).

ESMA stresses the importance of Best Execution requirements under both the current and the reviewed MiFID II framework. Investment Firms are thus required to strictly adhere to Best Execution requirements. ESMA has in fact been mandated to develop a new draft RTS on investment firms' order execution policies in the MiFID II review amending Directive.

Next Steps

ESMA expects National Competent Authorities not to prioritise supervisory actions towards Investment Firms relating to the periodic RTS 28 reporting obligation, from 13 February 2024 until the forthcoming transposition into national legislation.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact: csuinvestments@mfsa.mt.