
[ESMA35-335435667-5891](#)

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EVIA Answers to 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 as an alternative? Please state the reasons for your answers.

Yes, we agree with the proposal to address classes of financial instruments based on the instrument groups of ISO Standard 10962. This clearly concurs with overall convergence to globally agreed and adopted standards.

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.

We broadly agree that the current wording of the RTS is sufficiently clear and well embedded across the universe of MiFID investment firms.

Any changes in this respect would cause profound changes across the breadth of investment firms both within the EU and well beyond. Therefore, the threshold to making any changes should need to be substantive and well evidenced. This is not currently the case.

Moreover, any order execution policy is only a single part of a wider set, and as a minimum, it should be read in conjunction with the following documents:

- i) Receipt and Transmission of Orders Policy
- ii) Client Order Handling Policy
- iii) Conflicts of Interest Policy

Important to note here is that given the scope of application of the order execution policies to include all financial instruments and all types of intermediaries, it is highly inappropriate for ESMA to attempt to embed a cash equity, or RTS1 stencil into the Technical Standard. At the first step it is important for ESMA to recognise that most EU trading venues are operated by investment firms rather than being incorporated as standalone Regulated Markets. Secondly, trading interests that are arranged and matched as transactions which themselves are commonly comprised of a multiple number of trade legs and shapes tend to occur on different trading venues and over a period of time. These will likely include trade legs on third country trading venues and some which are entirely off-venue.

For example, whilst carrying out business as investment firms, our member firms operate a wide number and variety of OTFs and MTFs which cater for professional clients, but never retail. Whilst they will execute on a variety of trading venues, they would rarely bring trade matches to competitors' facilities, of whose execution capabilities each would know nothing ex-ante. Our member firms usually tend to execute transactions when using the following broking models:

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- i. Matched principal broking
 - ii. Riskless Principal broking
 - iii. Agency broking
 - iv. Executing Broker (for exchange traded derivatives) under the terms of either a three-way or four-way give up agreement.

When using the matched principal and riskless principal broking models, Our member firms will owe, as set out in its Terms of Business either a contractual or agency obligation to a client and therefore owes an obligation to take all sufficient steps to obtain the best possible result for that client. Therefore, we would consider that further specificity by ESMA should be limited to guidelines and practice standards rather than added to the Technical Standard as a substantive revision.

Furthermore, under the matched principal and riskless principal broking models, the Our member firms are deemed to be dealing on own account with a client and therefore executing client orders. As a result, hereby, they would owe a specific obligation to take all sufficient steps to obtain the best possible result for a client.

Conversely, the Firm does not execute under the business models where it arranges transactions and brings trades about using the name-passing broking model ["NGU"]. This scenario includes, but is not limited to:

- i. Bilateral trades (where the names passed in a transaction trade with one another as counterparty)
- ii. Cleared trades (where the parties in a transaction trade face a clearing house, as opposed to each other).

Please refer to our website for a more detailed description of the broking models used by the Firm when executing orders.

It is also the case for professional clients that there may or may not be a specific instruction. Where there is a specific instruction from a client, the broker investment firm shall execute the order in line with that instruction and where there is a specific instruction from a client in relation to only a specific aspect of an order, the firm shall execute the specific aspect of the order in line with that instruction.

Under the current MiFID provisions, our member firms remain well aware however that where a client has given specific instructions which cover one part or aspect of the order does not release the intermediary investment firm from its stated execution obligations in respect of any other parts or aspects of the client order that are not covered by such instructions. These provisions currently ensure that such an intermediary investment firm will not induce a client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, and it ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that client.

Our member firms are however permitted to invite a professional client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm. For the avoidance of doubt therefore, where any intermediary investment firm invites a client to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

In terms of fees, costs and charges, a broker or any other intermediary investment firm should not include the costs of execution which includes its own commission or fees charged to a client for the provision of an investment service were not considered for the purpose of determining the Execution Venues. Rather

it should include a single execution venue in its policy only where it is able to show that this allows it to obtain a specific execution outcome for its clients on a consistent basis. Furthermore, it will select a single execution venue only where it can reasonably expect that the selected execution venue will enable it to obtain results for clients that are at least as good as the results that the client could reasonably expect from using alternative execution venues.

Where the broker or any other intermediary investment firm is able to execute a transaction on competing venues, it should take into account its own commissions and the costs for executing an order on each venue as part of the assessment of the results for the client from the choice of venues available. It should not structure or charge commissions in such a way to discriminate unfairly between Execution Venues.

- For example, an interdealer broker will not charge a different commission or spread to a client for execution on different Execution Venues where the difference does not reflect the differences in the costs incurred by itself for executing on such Execution Venues.

In considering Third-party payments, the broker or any other intermediary investment firm should not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue which would infringe any of the requirements in relation to conflicts of interest.

Where it may receive third-party payments which do not infringe the requirements on conflicts of interest, the broker or any other intermediary investment firm will inform clients about any inducements that it may receive from Execution Venues.

- The information may specify the fees charged by the firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information should indicate the maximum fees or range of the fees that may be payable.
- Moreover, where the broker or any other intermediary investment firm charges more than one participant in a transaction, it should inform its client of the value of any monetary or non-monetary benefits received.

Q3: Do you agree with the proposed factor of "order sizes" respectively for retail and professional clients, to be considered in investment firms' selection of eligible execution venues in their order execution policy and internal execution arrangements (see Article 4(1)(d)(i and ii) of the draft RTS)? If not, what alternative factor would you propose?

No, we disagree. The proposal again considers only a retail model for trading cash equities rather than the panoply of financial instruments and execution services as briefly set out in our answer to question 2 above.

For instance, the professional client may have no idea of their order size until well after conclusion of the trade because in most MiFID markets the trades are arranged and executed in respect of the core economic terms, associated pricing factors, credit availability and related package, portfolio or spread components.

We would not propose any alternative factor but rather would leave the matter open to the development of regulatory guidelines and industry best practice standards.

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.

Whilst we broadly agree with the intended outcomes set out by ESMA in settling some specifications for the criteria to establish and to assess the effectiveness of order execution policies, we fundamentally disagree with the specification. Indeed, once again the ESMA text becomes too narrowly predicated on a retail and domestic cash equities model when the Technical Standards are designed to be broad in several dimensions.

Either ESMA specifies that any such criteria solely apply in respect of certain asset classes and solely for retail customers, or it should remove the tailored specific references altogether. For instance, a consolidated tape will only be available to certain instruments in a limited set of asset classes, whilst the alternative dataset of at least the same reference data quality is frankly a bizarre and non-descript statement ill suited for a technical standard.

Similarly, the concept of explicitly distinguishing the fees related to the order execution and charged to the firm is utterly inappropriate, unfeasible and incomprehensible to the wide spectrum of non-equities arranging and execution services where arranging services and trade execution fees are entirely separate, transaction dependant and not aligned with any choice of venue.

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

Whilst we broadly agree with the intended outcomes set out by ESMA in offering the choice or option for reliance on a third party, and/or an independent data provider, this also remains a concept that is disproportional in relation to the spectrum of intermediary investment firms and wholly inappropriate for MTFs and OTFs offering services to professional clients in any non-equities' instruments. Likely any such specificity would be better grounded in the supervisory expectations on an actual Exchange Regulated Market rather than in high level MiFID Technical Standards. Once again, we underscore that member firms do not provide investment services to any client classified as a "Retail Client;" therefore the ESMA text becomes too narrowly predicated on a retail and domestic cash equities model when the Technical Standards are designed to be broad in several dimensions.

Q6: Concerning the specific client instruction, should it be possible for an investment firm to pre-select an execution venue in the order screen, where the firm invites its clients to choose an executing venue out of multiple options? And if so, do you agree that only if the client chooses a different venue than the one pre-selected by the firm, the choice of execution venue does constitute a specific instruction? Please also state the reasons for your answer.

Yes, we broadly agree. We also underscore that it is common practice for any pre-selections of execution venue in the order screen to be carried out by technology providers who remain outside the ambit of EU MiFID.

Under the current MiFID provisions, our member firms remain well aware however that where a client has given specific instructions which cover one part or aspect of the order does not release the intermediary investment firm from its stated execution obligations in respect of any other parts or aspects of the client order that are not covered by such instructions. These provisions currently ensure

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that such an intermediary investment firm will not induce a client to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, and it ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that client.

Our member firms are however permitted to invite a professional client to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the firm. For the avoidance of doubt therefore, where any intermediary investment firm invites a client to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

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.

We broadly agree that the current text is clear with regard to what kind of obligations investment firm applying such models which may together be classified as "back-to-back trading" on own account. We would welcome the accepted MiFIR trade execution policy of "Matched Principal" broking to be expressly specified in the technical standard, mindful that it is the most common such for the trading of bonds across the EU not only via OTFs but also by MTFs and intermediary investment firms whose trades do not end up being executed on a trading venue.

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)?

Our additional comments would consider

Some specific language to provide assurances to firms as to the deletion of the MiFID2 "Best Execution" RTS 27,28 and therefore the full scope as to where and when any obligation to the prior concept of "Best Execution" is not owed by the firm.

The Technical Standards may consider more fully considering the use and understand of the term "Trading Venue", and concept of "Execution Venue":

- i. The term "Trading Venue" refers to the one of the following:
 - a Regulated Market ('RM')
 - equivalent third-country markets
 - a Multilateral Trading Facility ('MTF')
 - an Organised Trading Facility ('OTF')
 - equivalent third-country facilities/platforms (e.g. a UK OTF or a US a Swap Execution Facility)
- ii. The term "Execution Venue" refers to one of the following:
 - a Trading Venue

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- a Systemic Internaliser (“SI”)
 - a Market Maker
 - Other Liquidity Providers
 - Third-country firms performing a similar function

The Technical Standards may consider setting out the scope and terms for off-venue [“Ex-OFF”] or OTC transactions such that:

- Where the broker or intermediary investment firm may under certain conditions execute orders outside a trading venue.
- Where it will also obtain prior express client consent from a client before the execution of orders outside a trading venue.
- Where it executes OTC transactions on behalf of a client, the client will face counterparty risk in any resulting transaction with either the Firm or another market participant.
- Any other pertinent risks

The Technical Standards may consider setting out the scope and terms for request for quote [“RFQ”] methodology such as:

- Where broker or intermediary investment firm provides a quote to a client on the back of receiving a RFQ communication, and the quote meets the firm’s obligations to take all sufficient steps to obtain the best possible result for the client under the firm’s policies such that where it executes the quote at the time it is provided to the client, then the firm will meet those same obligations if it executes its quote after the client accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.
- Following the execution of a transaction the broker or intermediary investment firm will inform the client of where the transaction took place, i.e. whether the transaction was executed on an execution venue or OTC.
- This should take place via a trade affirmation or confirmation.