FESE Response to the ESMA Consultation Paper on the Review of the MiFID II Framework on Best Execution Reports

Brussels, 22nd December 2021

Introductory remarks

FESE, representing trading venues providing pre- and post-trade transparency, appreciates any efforts to improve transparency. It is crucial that the revision of the best execution reporting requirements set out in RTS 27 results in meaningful and informative reporting, enabling true comparability of execution quality between execution venues. Therefore, we support ESMA's request to thoroughly overhaul the best execution reports which have proven to fail their purpose of providing market participants with useful and comparable best execution information.

However, while we agree on overhauling the reports, we believe that ESMA should aim at striking the right balance between simplification and the inclusion of the relevant information, especially in terms of criteria and metrics. A simplification should not result in metrics that are inadequate to measure core best execution criteria such as implicit cost (spread) or other costs. The content of the reports should be meaningful and useful both for retail and institutional investors. Therefore, we believe that the redesigned reports should be easily accessible and fully harmonised and, where possible, the requirements between RTS 27 and RTS 28 aligned. We are also concerned that, without testing the requirement fully, the new reports would suffer from the same problems as the old ones.

Q1: Do you agree with the proposed scope in terms of execution venues for the reporting under a possible new RTS 27?

FESE appreciates that ESMA wants to streamline the reporting and would suggest that the reporting is consistent with the post-trade transparency requirements as per the future amended RTS 1 and RTS 2.

In the consultation paper, ESMA suggests limiting the scope only to transactions executed on trading venues and those OTC transactions where an SI or another liquidity provider is a party to the transaction. Looking also at the current requirements under RTS 27, as per Recital (5), "to ensure an accurate picture of the quality of execution that effectively occurred, trading venues should not publish among executed orders those traded over the counter and reported onto the trading venue." We would ask ESMA to confirm this requirement.

Regarding the new concept of market makers on non-anonymous trading systems, FESE would like ESMA to clarify that, for those non-anonymous trading systems such as RFQ systems, it is expected that the trading venue publishes a report for the whole MIC as well as one report per market marker. It is unclear in the second case what is the reporting format as Table 2 in the proposed legal text does not allow for an entry with the name of the market maker. It shall also be made clear that some metrics in that case do not apply like the "Number of designated market makers".

Q2: Do you agree with the proposed level of granularity by types of financial instruments instead of individual financial instruments under a new potential reporting regime? In particular, do you agree with the two proposed categories concerning shares (i.e., shares considered to have a liquid market and shares not considered to have a liquid market)? If not, please state the reasons for your answer and clarify what alternative categorisations you would propose in order to have a meaningful level of granularity for a new reporting regime.

FESE appreciates the proposal to reduce granularity and aggregate information on the basis of types of financial instruments, as well as the liquidity differentiation between instruments. We would however recommend that the aggregation proposed (per instrument type, per liquidity profile) could relate to any parameter or that there would be a similar level of aggregation as per RTS 1 and RTS 2 as well as for the consolidated tape (for example via the MIFIR identifier available in post-trade transparency reporting). Alternatively, we would question why the classification proposed in RTS 28 regarding the liquidity as determined under the tick size regime shall not be considered. Additionally, it is unclear why the different classes of instruments in the new RTS 28 Annex 1 are not apparently based on the MiFIR identifier, since the reference to the MIFIR identifier is not explicitly mentioned in the proposed text.

Q3: Do you agree with the proposed metrics to report the execution quality obtained by execution venues?

FESE appreciates ESMA's intention to reduce the number of metrics in order to make the best execution reports more concise and readable. However, it is of utmost importance to ensure that the simplification of the metrics does not result in a loss of informative value with regard to the criterion to be measured. We believe that ESMA needs to strike the right balance between simplification and informativeness in order to enable fair comparisons. For markets with a low amount of transactions in liquid instruments, there is a risk that the number of transactions will be so few that the calculation will not have statistical significance and may be far off from reality. We have some additional comments on the metrics mentioned:

- Median monetary transaction value per type of financial instrument in the previous quarter of the year: although the median is less sensitive to outliers, we believe there might be merits in publishing the average as well. However, we observe that given the level of aggregation proposed by ESMA, the metrics will be meaningless. Indeed, it seems odd to provide a median calculated across the same instrument type but with different liquidity profiles (besides the distinction between liquid and non-liquid).
- Bid-offer spread in relation to a median transaction: the metric is not sufficiently defined and it is not indicated if the median transaction is based on instrument or instrument-type level. Moreover, averaging absolute spreads across instruments with very different price levels, hence tick sizes and spreads, does not make sense. Absolute relative spreads (expressed as a percentage of the transaction price) make more sense.
- The costs for a median transaction: Under the current RTS 27, those costs are published on an instrument basis according to a logic which has proven complex and subject to a range of assumptions and approximations. Regarding connectivity fees, for example, all fees collected from members are summed up and redistributed equally between all listed instruments to estimate the fees on an instrument level. It might however be problematic for trading venues with more

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than one MIC or trading platform to distinguish between the same instrument traded on different MICs. In any case, the relevance of the approximation is questionable for it does not reflect the actual usage of the systems by the members. Moreover, while the current RTS 27 specifies that costs may also include clearing or settlement fees when they are part of the services provided by the execution venue, the new text does not include that part. We would recall that trading venues cannot include fees not part of their business activities.

- Number of designated market makers: This metric is insufficient as a single market maker does not necessarily represent poor likelihood of execution. A single market maker can be very present and continuously post quotes without worsening likelihood of execution. The current best execution reports contain metrics such as the average quote presence, the number of periods without quotes and the average duration of periods without a quote some of which should be taken into account to adequately assess the likelihood of execution.

Q4: Have you observed good or bad practices of reporting by execution venues under the current RTS 27 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

FESE members would like to underline that their RTS 27 best execution reports are available for free and without access limitations on their respective websites and are published in machine-readable formats. It is crucial that the reports are easily available and free of charge and the suggested format seems appropriate as well. We do support a a shortened time lead for the publication of the reports.

Q5: Have you observed good or bad practices of reporting by investment firms under the current RTS 28 that can be relevant for the elaboration of proposals to enhance access and user-friendliness of this information? Please provide specific examples if possible.

Q6: Do you agree with the classification for reporting proposed in Annex I of the possible new RTS 28, especially with regard to the suggested methodology for the reporting on equity instruments? If not, what alternative categorisations would you propose?

Q7: Do you agree with the proposals for a possible review of RTS 28?

FESE believes that the reports published under RTS 28 provide useful and insightful information on investment firms' execution practices. However, more detailed information could be provided by investment firms especially regarding payments made or received, discounts rebates, or non-monetary benefits received including, for each venue identified, the aggregate amount of any payment for order flow received, transaction fees paid, or transaction rebates received. We suggest that all flows where conflicts of interest might arise are published in a separate table, independently from their inclusion to the top 5 rankings. Those flows would include flows where the investment firm routes orders to their own SI, to an MTF they operate, or to venues they receive payment for order flow from. In each case, the traded volume and the payments received would be included, if applicable.

Q8: Do you agree with the cost benefit analysis as it has been described in Annex II?

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Q9: Are there any additional comments that you would like to raise and/or information that you would like to provide?

FESE agrees with regulators that the best execution reports are rarely read, as is evidenced by the very low numbers of views on the websites of venues and investment firms. They lack consistency and include high volumes of data and currently do not enable stakeholders to make meaningful comparisons on the basis of the information they contain. However, besides reducing reporting requirements or harmonising the reports, we believe that there are Level 1 and Level 2 changes that are needed to strengthen best execution in the EU. Fragmentation, darkness, and poor SI and OTC data quality also deprive brokers and investors of a clear fully consolidated picture of liquidity. Retail investors cannot easily determine whether they have received best execution. In that regard, a 15-minutes delayed CT with post-trade information that is accessible, complete (covers all transactions), and of high quality could enhance best execution data. We ask that sufficient time is provided to execution venues to implement potential new RTS 27 best execution reports. The amendments to the best execution report envisaged by ESMA in this consultation, should they be brought forward, would require substantial IT engineering efforts. As such, we would consider a 12 to 20 months implementation period as the minimum (two years being preferred).

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