

Brussels, 16 October 2024

## EFAMA RESPONSE ON ESMA'S DRAFT RTS ON ORDER EXECUTION POLICY

### General Comments:

Article 27 (including the new article 10) of MiFID II is at its core a requirement to establish order execution policies to obtain best possible results for clients.

Before looking into more detail into the mandated draft RTS it is important to recall that a firm's order execution policy is dedicated to all types of existing and future clients to inform and describe a methodology in regards to its venue selection and order execution strategy in compliance with applicable laws.

By nature and purpose, the policy has to be descriptive and is not meant to deliver analytical results. It is not a reporting tool. We are therefore somewhat surprised at the granularity in the specification of the criteria for establishing and assessing the effectiveness of investment firms' order execution policies.

To the extent that there are any shortfalls in NCAs' ability to supervise firms on this obligation, priority should be given to an ESMA Q&A document that can provide further guidance on documents that firms should make available.

Our member firms already produce order execution policies that are regularly updated and which are supplemented by periodic reports to clients showing analytical data.

While further clarification on the provisions of Article 27 MiFID could be useful, we should avoid creating another monitoring/assessment tool like the RTS28 reports, resulting in reams of data that end-clients are neither interested in or likely to consult. EFAMA members already deliver relevant analytics to clients once a quarter. The reporting is granular and done on an on-going basis as part of standard client servicing and reporting. Institutional clients are content with the level of reporting and analytics that they receive. In fact, as part of its response to this consultation, one EFAMA national association consulted with its member firms, and none of their respective clients had identified any data gaps.

Looking across EFAMA member firms, compliance departments are already delivering on best execution policies and client reporting that is relevant and regularly updated. In fact, policies are seen as a tool for differentiation and competitive advantage. We wondered if the areas for assessment of effectiveness of order execution quality, should not be in the retail space exclusively, and/or in less regulated areas like currency or crypto trading.

On the advent of a Consolidated Tape for different asset classes, we believe that a CT would provide an accessible, comprehensive and reliable overview of markets which would serve to contribute towards a number of activities including transaction cost analysis (TCA) and documentation best execution, market surveillance, liquidity risk management and portfolio valuation. We have been major supporters of a consolidated tape for European market data. However the use of such a tape should remain at the discretion of individual firms. It may be used for this purpose, but this should not be mandated. The consolidated tape should also not be placed above other possible data sources.

Criteria to consider when developing the draft RTS:

- Criteria must be meaningful for targeted addressees of the policy.
- Avoid requirements introducing unreasonable level of granular information which generates high cost of production whilst not delivering useful results
- A sound cost benefit analysis should be conducted by ESMA as this indirectly impacts EU competitiveness
- The policy must remain a generic document dedicated to a large scope of (potential) investors
- It shall sufficiently explain the key assessment criteria for order execution in different classes of financial instruments and give examples of theoretical circumstances under which derogations would apply or policy would be changed but not take all possible specific cases into account
- It shall define a reasonable frequency for assessment and monitoring obligations but not require to publish within the policy document analytical results
- Categorization of classes of financial instruments within the scope of the policy shall be standardized based on grouping
- Level 2 legislation should not introduce de facto obligations not mandated in Level1 (i.e. mandatory use of CT dataset)

**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 be an alternative? Please state the reasons for your answers.**

EFAMA members believe that the use of ISO standards to categorise classes of financial instruments is overly prescriptive and would be burdensome to implement by investment managers. In practice, this would require the differentiation between 76 different categories for equities, per country of primary listing. In addition to the unnecessary complexity that would be introduced, use of ISO standards could result in more errors in reporting, and would ultimately be more difficult to interpret by end -clients. We genuinely do not see any need to change how order execution policies function today. Investment firms have the ability to define the granularity of financial instruments, making the best execution policies a flexible tool over which firms have some discretion.

A firm's policy dedicated to a wide range of investors (retail and/or professional) must be based on a concept of grouping/clustering of instruments having the same main characteristics and which are understandable by the targeted large and heterogenous group of existing or future investors.

Grouping/Clustering of instruments is essential for meaningful categorization.

For this purpose, we are more inclined to support references to RTS 1 and RTS 2 for the sake of consistency,

**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 are not fully comfortable with the need to disclose at a granular level selected venues, per class of financial instrument, order frequency and according to client type, as this would remove the ability to pivot and make adaptations as market conditions change.

Today's best execution policies already include venue selection,, based on a clear set of qualitative and quantitative criteria applicable to all investment firms and fully transparent to clients.

These criteria will be building blocks of a list of selected venues. A venue can appear as eligible for some assets and clients, while ineligible for others. And one possible outcome is that the investment firm selects only one venue to execute all client orders. The selection process should not differ, to back the validation of a single or multiple venues: this is key in validating the possible conclusion that only one execution venue is the best choice.

We know that this eligibility list can be amended from time to time. Referring to the same list of criteria for single or multiple venues is more appropriate.

**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?**

The inclusion of order size as a factor for venue determination is problematic for us, for a number of reasons:

- Order size is only one among a number of factors that need to be considered in determining venue selection. There are other characteristics to be taken into account in each market segment such as liquidity thresholds, market impact, client type, and lower touch automated workflows. ...).
- Establishing venue selection according to order size would be restrictive of trading practices, again removing the investment firm's ability to consider other factors as more appropriate for a given trade.
- Size as a stand-alone factor is also unworkable given that such a large number of individual client orders actually trade as a bloc trade.
- Once again, looking at current best practice, order execution policies already include the key characteristics of the order, i.e pre and post trade market insights and price (net of broker commissions, execution venue fees and other applicable execution costs).

**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.**

Firstly, it is important to note that under the current MiFID II regime firms are already required to specify the relative importance of each of the factors that play a role in order execution, also per class of financial instruments (Art. 66(2) and 3 MiFID II delegated regulation, referring to Article 27 MiFID II);

As such, firms are regularly assessing the various execution characteristics to help to determine their relative importance in the execution decision making. We see a number of issues with the proposed approach in the draft RTS:

i) Mandate use of Consolidated Tape

Under art (4) of the new MiFIR text, the obstacles that existed previously to the creation of a CT are mentioned and the remedies to remove them are cited as: a) all trading venues and APAs must submit data to the CTP, and b) data harmonisation must be sought to improve the data quality. There are no provisions whatsoever to make the use of the CT compulsory. Yet that this is precisely what the RTS on order execution policy appears to achieve.

The current references to the use of the CT in Articles 4(2) **Initial selection of execution venues for the order execution policy**, Article 6(5) **Monitoring of best execution quality**, and Article 7 (2) **Assessment of the order execution policy** is unacceptable to us:

- It creates a quasi-mandatory consumption of the Consolidated Tape which was never foreseen in the Level 1 text
- Yes, we agree that for public display purposes, the CT could be used as a real time common benchmark to help secure best execution for retail clients.
- It presupposes a level of quality of data on the CT which cannot be known at this stage
- For equities data, the CT will only contain limited pre-trade data, only best bid and offer without venue attribution. Firms may want to use alternative data feeds which provide more granular and faster data. The scopes of the CT should therefore first be sufficiently broadened (e.g. venue attribution), market-wide adoption (e.g. at least 2 years of successful running of tape providers), and necessary changes to EU trading rules (e.g. minimum order sizes). As such, consolidated tapes currently will not be informative of the various considerations to achieve best execution.
- Investment firms, especially institutions, typically achieve execution across a variety of trading venues, to account for the extremely fragmented and multilateral trading architecture of EU markets. In addition to price, factors like volume, execution certainty, and costs of settlement & clearing that are not in scope for EU CT also need to be taken into consideration.
- The provision for the use of alternative datasets places the burden of proof on the firm to demonstrate that alternative datasets are of comparable quality. The current wording would simply discourage firms from relying on alternative data sources.

ii) Requirements under article 6 Monitoring are onerous and disproportionate to the objective of establishing and assessing firms order execution policies.

Firms are regularly assessing the various execution characteristics to help to determine their relative importance in the execution decision making. The approach detailed under article 6 results in a costly and needlessly prescriptive approach with thresholds, and minimum deviations whose only effects are to complicate monitoring and restrict trading .

Though we do understand the added value of committing to criteria that would be most important in choosing which execution venue to route an order to, we think it would be important to maintain sufficient room to maneuver, depending on the circumstances in the market at the time of execution.

There is a serious threat to the total consideration approach in art. 6(2d) which says that investment firms must specify a maximum portion for trades that can deviate from reference dataset (referring to consolidated tape,). This seems to place price as the main determinant of execution quality and that any deviation from reference prices implies poor execution quality. Though price might be the most important factor, other factors are relevant as well.. A deviation from reference prices could as well imply that other factors have proven to be more relevant during the reference period as that quality of execution has been poor . We would not like to unwittingly move away from a total consideration approach in Europe to the trade-through rule like in the US under Reg NMS.

We would like to ensure that the monitoring of execution quality will not require full reproducibility of all considerations at the time an order was transmitted/executed (needing to evidence that for a particular trade other factors were more important). See article 6(2)(c) which require the assessment of all or a sample of transactions. For some factors this would be very difficult (burdensome) to achieve (e.g. likelihood of execution).

Lastly, a minimum periodicity of monitoring of every three months does not seem to align with a risk based approach and could cause samples to become very small. A yearly monitoring exercise would be more appropriate in reducing the operational burden and in ensuring that the assessment are carried out on a representative sample.

**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.**

We agree that investments firms should be able to rely on monitoring and assessment performed by third parties. The use of TCA vendors is standard practice by many firms,

**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.**

Investment firms should have discretion to select venues, and to not provide warning or notifications to clients prior to trading. There may be cases where a client has provided explicit instructions with respect to order execution, which will be captured under the terms of the Investment Management Agreement (IMA). In these instances, an investment firm acting on behalf of the client instructions will be deemed to have fulfilled Best Execution obligations, although it will continue to apply the Best Execution Policy to any aspect of the order not covered by the client instruction.

## Annex II

### **Draft RTS specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies**

#### **COMMISSION DELEGATED REGULATION (EU) 2024/...**

#### **of XXX**

#### **supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to be taken into account in establishing and assessing the effectiveness of order execution policies of investment firms**

#### **(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>, and in particular Article 27(10), fourth subparagraph thereof,

Whereas:

- (1) To ensure order execution quality for retail and professional investors in accordance with Article 27(1) of Directive 2014/65/EU and a level-playing field between investment firms providing the service of execution of orders on behalf of clients and those investment firms providing reception and transmission of orders, policies are required to be in place for the provision of the investment services.
- (2) For the service of reception and transmission of orders, Article 65 of Commission Delegated Regulation 2017/565<sup>2</sup> applies, which includes establishing and implementing a policy to reach the best possible result for their clients in accordance with Article 27(1) of Directive 2014/65/EU. Investment firms offering such service should have policies and arrangements in place that ensure that the third parties the client orders are placed with or transmitted to, comply with the requirements in this Regulation. Investment firms providing the investment service reception and transmission of orders should also monitor and periodically assess the execution quality provided by these third parties and make amendments to the execution arrangements when deficiencies are identified.
- (3) Where an investment firm relies on a single entity for the execution of all client orders, the investment firm should assess whether the execution arrangements of the entity enable the firm to obtain the best possible results for its clients and whether changes are necessary. This assessment should be reviewed periodically. These changes should include modifying the agreement with the entity to ensure better outcomes for their clients or forwarding client orders to other entities when this is in the best interest of their clients.

---

<sup>1</sup> OJ L 173, 12.6.2014, p. 349

<sup>2</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 087 31.3.2017, p. 1).

- (4) Where investment firms provide both the investment services of execution of orders and reception and transmission of orders related to the same class of financial instruments, they should take both investment services in consideration for these classes of financial instruments when complying with the provisions included in this Regulation.
- (5) Retail clients legitimately rely on the firm to protect their interests in relation to the pricing and other parameters of the transaction. However, professional clients may not always rely on the investment firm for best execution in the same way. Whether or not a professional client may rely on the investment firm for best execution depends on the specific circumstances and should be assessed on an individual basis. This assessment should take into account at least the specific agreement between the investment firm and the professional client, the characteristics of the financial instrument involved, the ability for the professional client to observe market transparency, and the ability to obtain competitive quotes from other firms.
- (6) To clarify the overarching objective of their client order execution activities, investment firms should set out in their order execution policies that, pursuant to Article 27(1) of Directive 2014/65/EU, they take all sufficient steps when executing client orders to obtain the best possible result for retail clients by pursuing the total consideration approach. Additionally, investment firms should also describe their approach for professional clients, if different from the total consideration.
- (7) Investment firms should determine which execution venues are included in their internal order execution policies and arrangements, by initiating a selection process that meets the requirements of this Regulation.
- (8) To effectively include appropriate execution venues in their order execution policies, investment firms should in their initial selection only account for venues authorised by national competent authorities and do this selection in accordance with their internal governance procedures. Investment firms should also keep an up-to-date list of internally approved execution venues which they intend to use.
- (9) To provide meaningful information on the criteria that an investment firm applies to identify the venue to which it will route the order for execution where a specific client order can be executed on several venues, the execution policy should include information on the obligatory and discretionary factors the firm accounted for when making the order routing decision.
- (10) Comparing execution prices with a limited dataset of pre-trade transparent orders is often insufficient when assessing the quality of execution, considering that transactions can often be executed close to mid-point. Therefore, methods comparing actual execution prices provide the added value of using actual execution prices and show their average difference to mid-point. Pre-transparent orders represent only a portion of actual trading interests, whereas post-transparency covers all trades. Consequently, analytical methods that use actual execution prices in a discrete-time model, are preferable methods to conduct assessments under this Regulation. However, for specific classes of financial instruments, the availability of actually executed prices may be limited. Therefore, it is also possible to utilize methods that use pre-trade order data. Provided that the quality of the assessment for those classes of financial instruments is at least equal compared to methods that use actually executed prices and investment firms are able to demonstrate so.
- (11) Once ~~and~~, where available and **when of proven quality**, the data provided by the consolidated tapes ~~will be~~ **can be** a valuable ~~and the preferred~~ source, among others, for assessing the quality of execution.

- (12) Where an investment firm has initiated the offering of investment services with regards to the execution venues it has selected and identified for its order execution policy, the firm should implement a monitoring process to observe the execution quality of the orders it has executed for its clients. The investment firm should define thresholds per class of financial instrument, to monitor whether it obtains, on a consistent basis, the best possible result for clients. This monitoring should enable the firm to initiate an event-driven review of its order execution policies and arrangements and the selection of execution venues in case the achieved execution quality is insufficient.
- (13) The investment firm should assess the selected execution venues and their order execution arrangements, which may lead to the conclusion that an execution venue no longer consistently obtains the best possible result. The assessment should be based on the transactions that are the result of the orders the investment firm has executed for its clients on these venues and other relevant venues which should be included in these analyses.
- (14) The investment firm's assessment of its order execution policy and internal execution arrangements should include an assessment to ensure that contractual arrangements, such as long-term contracts or exclusivity agreements, do not impede providing for the best possible result for the client, in particular, when deficiencies have been identified and need to be corrected. Consequently, the investment firm may have to reconsider and renegotiate its contractual arrangements with execution venues.
- (15) Where an investment firm selects only one execution venue to execute client orders for a given class of financial instruments, or even for all client orders, the firm should comply with all relevant requirements in this Regulation. For example, only when the firm can substantiate that it is in the best interest of its clients to select only one execution venue, this venue should be included in the order execution policy. Accordingly, where the monitoring or assessment reveals that better execution quality can be obtained by including additional or different execution venues in the order execution policy, the firm should do so.
- (16) Both senior management and the compliance function have an important role within the investment firm to ensure its compliance with its obligations under Directive 2014/65/EU. Due to the complex nature of best execution and the importance of the topic, these functions may rely on support by other units of the investment firm, for example, the risk management unit, to ensure decisions are made on a sound basis. However, both the compliance function and senior management should have a decision-making role in the establishment and assessment of the order execution policy.
- (17) It is important that investment firms keep appropriate records of their client relations, client order handling and any order execution policies, arrangements, and reviews thereof to enable competent authorities to fulfil their supervisory tasks and perform enforcement actions as needed, in view of ensuring both investor protection and market integrity. Additionally, investment firms should keep these records in machine-readable format to facilitate data analysis and to enable competent authorities to act more efficiently.
- (18) According to Article 27(1) of Directive 2014/65/EU, clients may provide a specific instruction related to a part or aspect of an order. If an investment firm accepts such specific instruction, the investment firm should follow this instruction in respect of that part or aspect when executing the order. All other parts and aspects of the order that are not part of the specific instruction should be treated as a regular client order. Article 64(2) of the Commission Delegated Regulation (EU) 2017/565 sets out that when following such a specific instruction, the investment firm satisfies its obligation under Article 27(1) of Directive 2014/65/EU to take all sufficient steps to obtain the best



possible result for a client. Accordingly, the specific instruction has significant investor protection consequences. Therefore, it is important to clarify what constitutes a specific client instruction and the safeguards that investment firms should include in their order execution policy to ensure the correct use of the specific client instruction. These safeguards should, among others, prevent that firms apply practices such as dark patterns, that materially distort or impair, either on purpose or in effect, hamper the ability of recipients of the service to make autonomous and informed choices or decisions.

- (19) To ensure that investment firms obtain the best possible result for their clients in accordance with Article 27(1) of Directive 2014/65/EU when executing client orders based on own account deals, such as with matched principal trading, dealing against the investment firm's own proprietary position, or executing in response to a 'request for quote', the order execution policy should, in addition to all other requirements included in this Regulation, address the identification and management of conflicts of interest between investment firms and clients.
- (20) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'class of financial instruments' means any of the classes of financial instruments specified in Article 2;
- (b) 'execution venue' means an execution venue as referred to in Article 64(1), second subparagraph, of Commission Delegated Regulation (EU) 2017/565;
- (c) 'machine-readable format' means a machine-readable format as defined in Article 2, point (13), of Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>4</sup>;
- (d) 'material change' means a material change as referred to in Article 65(7), fourth subparagraph, of Commission Delegated Regulation (EU) 2017/565;
- (e) 'securities financing transaction' means a securities financing transaction as defined in Article 3(11)

---

<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>4</sup> Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

of Regulation (EU) 2015/2365 of the European Parliament and of the Council<sup>5</sup>.

## Article 2

### Classes of financial instruments

4. The manner in which to identify classes of financial instruments as referred to in Article 27(5) of Directive 2014/65/EU shall be based on the classification of instruments found in RTS1 and RTS 2. ~~the instrument groups included in ISO 10962 on the classification of financial instruments (CFI) in the following way:~~
  - ~~(a) each group of financial instruments in ISO 10962 composed of the first two letters of the CFI code shall constitute a class of financial instruments;~~
  - ~~(b) for the groups within the equities category as defined in ISO 10962, E-\*\*\*\*\*, each country of primary listing shall constitute an additional class of financial instruments.~~
2. ~~By way of derogation from paragraph 1, several ISO 10962 groups of financial instruments may be clustered into a single class of financial instruments, provided that these groups have homogeneous characteristics. Investment firms shall demonstrate in their order execution policies the reasons for clustering any groups and the reasons the clustering does not impair the ability to obtain the best possible result for clients.~~

## Article 3

### Establishment of an order execution policy

1. An investment firm shall specify the following in its order execution policy in relation to execution venues:
  - (a) the internal governance procedures for the selection of execution venues;
  - (b) the measures taken to ensure selected execution venues are authorised by competent authorities or third-country authorities, as the case may be.
2. An investment firm shall maintain a list of the execution venues selected as part of its order execution policy, including **at least** where appropriate, the following information:
  - (a) name and identifier of the execution venue;
  - (b) the date when the investment firm approved the execution venue for its order execution policy;
  - ~~(c) governance body of the investment firm that approved the selection of the execution venue;~~
  - (d) the classes of financial instruments for which the execution venue may be used;
  - (e) the types of transactions, including securities financing transactions, for which the execution

---

<sup>5</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337 23.12.2015, p. 1).

venue may be used;

- (f) whether the execution venue may be used for retail or professional clients;
  - (g) any other limitations of the execution venue;
  - (h) the type of access to the execution venue (direct or indirect).
3. An investment firm shall specify in its order execution policy the measures to ensure that client orders may only be executed on execution venues included in the list referred to in paragraph 2, unless the investment firm acts in accordance with Article 8 or all of the following conditions are met:
- (a) there are exceptional circumstances, including a fast decrease of liquidity or extreme price volatility relating to the financial instrument in the order to be executed;
  - (b) it is in the best interest of the client making the order.
4. Where an investment firm offers both the investment services of execution of orders on behalf of clients and reception and transmission of orders, the firm shall specify in its order execution policy how it complies with the obligation to act in the best interests of its clients in accordance with Article 24(1) of Directive 2014/65/EU when deciding whether or not to execute the order itself.

#### *Article 4*

##### Initial selection of execution venues for the order execution policy

1. For the purpose of establishing its order execution policy on the initial selection of execution venues, an investment firm shall take into account the characteristics and needs of the clients to which it provides investment services, including:
- (a) the factors referred to in Article 27(1) of Directive 2014/65/EU;
  - (b) the availability of certain order types;
  - ~~(c) the investment amount;~~
  - (d) the typical frequency and value of orders from its clients, including:
    - (i) for retail clients, at least two different order frequencies and values that are representative of the orders from the retail clients of the investment firm;
    - ~~(ii) for professional clients, at least two different order frequencies and values that are representative of the professional clients of the investment firm, including, where applicable, the order size in relation to the average daily volume of the financial instrument;~~
  - (e) that the investment firm shall only offer the service of order execution on behalf of clients for classes of financial instruments that are executed over the counter, including bespoke products, when the investment firm has the necessary arrangements and valuation systems in place to ensure systematic and robust checks of the fair price of such products;
  - (f) for the criterion of costs, the fees and costs as referred to in Article 7(2)(b);

~~(g) for the criterion of price:~~

- ~~(i) for each class of financial instruments, an assessment of the execution quality that compares the execution prices of potential execution venues to be selected with a consolidated dataset of reference prices;~~
- ~~(ii) for financial instruments traded on third country trading venues, an assessment of the execution quality that compares the execution prices of potential execution venues to be selected with the prices obtained on the execution venue where the financial instrument was first admitted to trading or on the venue which the most relevant market in terms of liquidity;~~
- ~~(iii) for classes of instruments which are executed over the counter, including bespoke products, the ability of the investment firm to check the fairness of the price proposed to the client as referred to in Article 64(4) of Commission Delegated Regulation (EU) 2017/575;~~

2. For the purpose of taking into account the criterion of price in accordance with paragraph 1, point (g), an investment firm shall use ~~the~~ consolidated tape data or alternative datasets, ~~provided the alternative dataset provides at least the same reference data quality as the consolidated tape data.~~

## *Article 5*

### Order routing criteria

1. Where a client order may be executed on two or more execution venues included in the list referred to in Article 3(2), an investment firm shall specify in its order execution policy the criteria and their relative importance for identifying the execution venue that obtains the best possible result for executing a client order in accordance with Article 27(1) of Directive 2014/65/EU.
2. The criteria referred to in paragraph 1 shall take into account at least the following:
  - (a) the class of financial instruments;
  - (b) whether the client is a retail or a professional client;
  - (c) all costs directly related to the execution of the order, including any fees and commissions charged by the investment firm itself;
  - (d) the real-time market data concerning the financial instrument, including the relevant prices offered by available execution venues and the likelihood of execution at the available execution venues at the intended execution time;
  - (e) the size and nature of the order;
3. Where an investment firm uses an automatic order routing system, the investment firm shall specify in its order execution policy the main characteristics of the system and the arrangements in place to ensure that the automatic order routing system takes all sufficient steps to obtain the best possible result for their clients.
4. An investment firm shall not use an automatic order routing system if the firm is aware prior to the execution of an order that using the automatic order routing system may have an adverse impact on the execution quality.

## Article 6

### Monitoring of the execution quality

1. An investment firm shall have a monitoring procedure to observe the effectiveness of its order execution arrangements and order execution policy. The monitoring procedure shall assess at least the following factors:
  - (a) the price of execution taking into account a reference dataset;
  - (b) fees and costs applicable to each of the execution venues, in accordance with Article 7(2)(b);
  - (c) speed of execution;
  - (d) the results of the criteria set out in (a) to (c) in accordance with the total consideration for retail clients and any alternative considerations for professional clients as set out in Article 27(1) of Directive 2014/65/EU.
2. The monitoring procedure referred to in paragraph 1 shall cover at least the following:
  - (a) the periodicity of the monitoring, which shall be at least ~~once a year every three months~~;
  - (b) the functioning of the investment firm's internal order execution arrangements and its impact on the obtained execution quality on the selected execution venues;
  - ~~(c) an assessment of all transactions of the investment firm, or a representative sample, for each class of financial instruments;~~
  - ~~(d) the thresholds to monitor execution quality for each class of financial instruments, including an acceptable deviation of the execution results from the reference data and a percentage of minimum traded volume that must meet the threshold.~~
- ~~3. For the purposes of acceptable deviation referred to in paragraph 2, point (d), for classes of instruments executed over the counter, including bespoke products:
  - ~~(a) the acceptable deviation from the reference data shall be monitored by checking the fairness of the price obtained for the client in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565;~~
  - ~~(b) the execution prices obtained shall be compared with reference data based on market data used in the estimation of the price of such instruments and, where possible, similar or comparable instruments.~~~~
- ~~4. For the purposes of calculating the percentage of minimum traded volume that meets the threshold referred to in paragraph 2, point (d), the investment firm shall use data from a period of up to three months, or for a longer period of up to one year, provided the firm is able to demonstrate that a longer period is necessary to ensure sufficient trading data is available to determine execution performance.~~
5. For the purposes of the monitoring procedure referred to in paragraph 1, an investment firm shall use a reference dataset based on:

- (a) consolidated tape data; or
  - (b) alternative data sources, ~~where consolidated tape data is not available or where the firm is able to demonstrate that an alternative dataset provides at least the same reference data quality;~~
  - (c) for classes of instruments which are executed over the counter, including bespoke products, data provided by third parties, provided the investment firm has valuation systems in place to ensure systematic and robust checks of the fair price of such classes of instruments.
6. To comply with this Article, an investment firm may only rely on monitoring performed by a third party, such as an independent data provider or execution venue, under the condition that the investment firm ensures a thorough review of the monitoring process.

### *Article 7*

#### Assessment of the effectiveness of the order execution policy

1. Based on the results of the monitoring of the execution quality in accordance with Article 6 of this Regulation, an investment firm shall assess the effectiveness of its order execution policy:
  - (a) at least annually;
  - ~~(b) whenever the execution quality of the monitored transactions during a monitoring period breaches a predefined threshold;~~
  - (c) whenever there is a material change to the order execution policy or the factors taken into account in that policy.
2. The assessments referred to in paragraph 1 shall assess at least the following factors:
  - ~~(a) the price of execution compared to a reference dataset based on consolidated tape data or, where such data is unavailable or where~~ an alternative dataset ~~provides at least the same reference data quality, alternative reference datasets;~~
  - (b) the following costs and fees charged to the investment firm:
    - (i) trading and order execution fees;
    - (ii) cost of membership or connectivity;
    - (iii) costs and charges for clearing, settlement, custody and other administration services related to the choice of execution venue;
  - (c) the speed of execution;
  - (d) the functioning of its internal order execution arrangements and its impact on the obtained execution quality on the selected execution venues;
  - (e) market developments concerning execution venues and the impact on the firm's ability to obtain, for its client orders, the best possible result on a consistent basis;

- (f) the emergence of new execution venues;
  - (g) new functionalities, fee structures, transparency in price formation and levels of liquidity of execution venues, or execution services provided by execution venues;
3. The reference datasets referred to in paragraph 2(a) shall relate to the following information:
    - (a) for non-EU equity instruments, at least the execution venue where the instrument was first admitted to trading or the most relevant execution venue in terms of liquidity;
    - (b) for derivatives, the three execution venues that are most relevant in terms of liquidity, unless there are less than three execution venues, in which case, those execution venues;
    - (c) for classes of instruments which are executed over the counter, data which enables the investment firm to assess the fairness of the price obtained for the client in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565.
  4. For instruments for which there is no reliable reference data, such as bespoke OTC instruments, the reference datasets referred to in paragraph 2(a) shall constitute qualitative checks of the fairness of the price obtained for the client.
  5. Where the investment firm constructs the reference dataset for classes of instruments which are executed over the counter using data provided by third parties, the investment firm shall have the necessary arrangements and valuation systems to ensure systematic and robust checks of the fair price of such products.
  6. An investment firm shall update its order execution policy to correct any deficiencies identified in its assessment of effectiveness within a reasonable period based on the seriousness of the deficiency, but at the latest three months after the conclusion of the review.
  7. To comply with this Article, an investment firm may only rely on an assessment performed by a third party, such as an independent data provider or execution venue, provided that the analyses performed by the third party are representative for the client base of the investment firm with regard to the financial instruments and order sizes assessed.

## *Article 8*

### Client instruction

1. An investment firm shall set out in its order execution policy the arrangements for dealing appropriately with specific instructions from clients. The investment firm shall specify the impact of instructions on the criteria included in Article 4 of this Regulation and its ability to obtain the best possible result for the instructing client.
2. An investment firm shall define in its order execution policy how to differentiate between orders with and without specific client instructions. The investment firm shall at least describe that a specific client instruction involves either:
  - (a) a choice of one option out of multiple options offered by the investment firm related to a part or aspect of the order;



- (b) an instruction to the investment firm to handle the order in a different way than foreseen by the order execution policy.
3. Where an investment firm receives a specific instruction, the firm shall only treat the part or aspect of the order specified by the client as a specific client instruction. For all other parts and aspects of the order, an investment firm shall ensure its order execution policy provides that they are processed in the same way as orders without specific instructions.
  4. Where an investment firm offers the client to choose an execution venue, the investment firm shall include the following details in its order execution policy:
    - (a) an explanation of how the policy prevents inducing a client to choose a specific execution venue;
    - (b) if the commissions charged differ per execution venue, an explanation of how the investment firm complies with Article 64(3) and Article 66(5) of Commission Delegated Regulation (EU) 2017/565;
    - (c) that a warning will be provided to the client immediately prior to placing an order that the selection of an execution venue by the client may prevent the investment firm from obtaining the best possible result for the execution of the order;
    - (d) that clients are offered the possibility not to specify a specific execution venue, which means that the choice of the execution venue is the responsibility of the investment firm, including obtaining the best possible result for the execution of the order;
    - (e) that the order will be routed in accordance with the investment firm's order execution policy if the client does not choose the execution venue.
  5. Pursuant to Article 27(4) of Directive 2014/65/EU, an investment firm shall only permit in its order execution policy to invite a client to select an execution venue when all the execution venues out of which the client could choose for the specific class of financial instruments are consistent with the order execution policy of the investment firm and thus allow them to obtain the best possible result.

#### *Article 9*

##### Dealing on own account when executing client orders

1. An investment firm shall specify in its order execution policy the arrangements to ensure that the investment firm only deals on own account when executing client orders where all of the following conditions are met:
  - (a) the order execution policy of the investment firm expressly provides for the option of executing client orders on own account;
  - (b) executing client orders on own account provides the best possible result for their clients.
2. An investment firm shall set out in its order execution policy the ways to adequately identify, prevent and manage the conflicts of interest related to dealing on own account when executing client orders.

3. When dealing on own account in OTC products in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565, an investment firm shall set out in its order execution policy how the fairness of the price proposed to the client is ensured.
4. An investment firm shall specify in its order execution policy how it assesses the consequences, including any additional risks, for clients when dealing on own account when executing their orders and how the firm complies with Article 66(3)(e) and Articles 68 to 70 of Commission Delegated Regulation (EU) 2017/565.

#### *Article 10*

##### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from X Month Year.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels.

For the Commission

The President

\_\_\_\_\_



## ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages around EUR 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the authoritative EFAMA Fact Book.

More information is available at [www.efama.org](http://www.efama.org)

### Contact:

**Susan Yavari**

Senior Policy Advisor, Capital Markets

[Susan.yavari@efama.org](mailto:Susan.yavari@efama.org) | +32 2 548 26 55