

Milan, 16 October 2024

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Via ESMA website

Prot. n. 51/24

Re: AMF Italia contribution to ESMA Consultation Paper “*Technical Standards specifying the criteria for establishing and assessing the effectiveness of investment firms’ order execution policies*”

AMF Italia¹ welcomes the opportunity to provide comments on the ESMA Consultation Paper in subject as better detailed here below.

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.

No. AMF Italia members believe that such proposal and both the relating methodologies would lead to very granular results and too many details, with significant economical and administrative burdens for investment firms and no material benefits for clients who, on the contrary, do not need an additional set of poorly understandable information.

Therefore, they think that no changes should be made to the current classification criteria based on high level asset classes. This is more useful for clients rather than providing them with more granular classifications.

¹ AMF Italia – *Associazione Intermediari Mercati Finanziari* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian markets.

However, should ESMA decide to set out a new categorization, then the classification pursuant to RTS1 and RTS2 could be an option, on the assumption that an impact assessment confirms its viability under a cost-benefit standpoint.

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.

As a preliminary remark, AMF Italia members believe that there is no need to review the current framework in relation to the selection of execution venues because existing Level 1 and Level 2 provisions and ESMA Q&As already provide a comprehensive framework which is well-known and implemented by the industry.

However, with reference to the draft RTS, our members note that, under MiFID II rules, investment firms are not prohibited from selecting one execution venue only to execute clients' orders if they are able to demonstrate that such a choice enables them to consistently obtain the best results for their clients.

Recital 15 of the draft RTS mentions the case where the investment firm selects one venue only to execute client orders for a particular class of financial instruments or even for all client orders. However, the criteria provided for monitoring and assessment make the possibility of selecting and maintaining a single execution venue impracticable in many cases.

In this respect, we would suggest the adoption of different assessment criteria based on *-inter alia-* the liquidity of the venue for one or more classes of financial instruments.

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?

AMF Italia members believe that the most critical factor set out in article 4 of the draft RTS is not the one relating to the “*order size*” but the proposed criterion of selecting execution venues considering “*consolidated dataset of reference prices*” and the subsequent reference to the use of the consolidated tape (or an alternative dataset having “*at least the same reference data quality as the consolidated tape data*”) for such purpose.

The need for the *consolidated tape data* entails, *de facto*, mandatory consumption of the CT by investment firms which is not in line with Level 1 legislation and would entail significant costs for the investment firms in the absence of – as previously stated – an impact assessment analysis covering all provisions under the draft RTS. Moreover, at present, there is no certainty about “when” a consolidated tape will be effectively established.

Finally, the reference to the “*alternative dataset*” does not seem a concrete alternative given the data offer currently available.

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.

As a general remark, AMF Italia members believe that the proposed criteria for establishing and assessing the effectiveness of investment firms’ order execution policies are (i) not very clear from an implementation standpoint, (ii) too granular, and (iii) of no tangible benefit for clients while entailing additional costs and burdens for investment firms.

In addition, they believe that it is not always appropriate to consider the price as the main driver for monitoring and assessing execution venues, given that other factors - such as liquidity - may very often be equally (if not more) important for a consistent result.

In our members’ opinion, the provision under article 3, paragraph 3, of the draft RTS is too restrictive, especially considering that both conditions under lett. (a) and (b) have to be met. Therefore, they believe that a higher degree of flexibility should be granted to investment firms to allow them to choose execution venues not included in the list forming part of their order execution policy.

In this latter respect, AMF Italia members believe that certain requirements of such list as proposed under article 3, paragraph 2, of the draft RTS (such as “*name and capacity of the person or governance body of the investment firm that approved the selection of the execution venue*”) may be of little interest for clients while they may be useful for internal purposes. Moreover, when setting out the requirement relating to the “*type of access to the execution venue*”, lett. (h) of the provision in comment is not clear because if the access is indirect, then the investment firm does not execute but it transmits the order.

Furthermore, our members would like to reiterate their disagreement with respect to the presence of the criterion of “*consolidated dataset of reference prices*” and subsequent reference to the consolidated tape, for the reasons detailed in Q3 above.

As regards the proposed article 5, paragraph 2, of the draft RTS, AMF Italia members do not agree with the “*historical data*” criterion under lett. (f) because they expect significant implementation issues as well as further costs to be borne for such additional data requirements without any material benefit for clients.

Moreover, with respect to article 7, paragraph 6, of the draft RTS, our members would ask ESMA to extend the 3-month period for updating the execution policy in order to correct deficiencies identified during the relevant assessment. Such request is based on the fact that the aforementioned update (which may also entail IT implementations) may sometimes take longer.

Finally, it would be useful to specify, in article 5 of the draft RTS, that the investment firm may in some circumstances route the order not automatically through an AOR, if it is in the best interest of the client.

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.

As a preliminary remark, please note that our members do not agree with the excessive detailed provisions under articles 6 and 7 of the draft RTS.

In particular, they object to the reference to “*thresholds*” and “*acceptable deviations*” from such thresholds, given the complexity in setting them and the need to take into account any factor which may affect execution quality.

However, should ESMA decide to keep such granular level in respect of the aforementioned articles, then clarifications should be given about methodology, also in order to avoid unlevel playing field and legal uncertainty.

With respect to the provision under article 6, paragraph 6, of the draft RTS, first of all AMF Italia members would request ESMA to clarify, for the avoidance of doubt, that the reliance on monitoring performed by a third party is a choice of the investment firm and that, therefore, the involvement of such third party is not mandatory. One more area which is not completely clear to our members is the meaning of the *independence* of data providers.

That being clarified, our members would like to understand what ESMA means when writing, in Q5 above, “*as long as the firms assess the processes of these third parties*”.

In particular, they would like to understand what kind of assessment ESMA expects, given that such an assessment can only be carried out to a limited extent by investment firms and could not, for example, include an assessment of proprietary methodologies or of items subject to intellectual property rights.

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.

In our members’ opinion, when the policy sets out two or more execution venues and the client expressly requests to have the order executed on one of such venues as presented in the order screen, then such indication constitutes a specific instruction.

With reference to the delivery to the client of the warning mentioned under lett. (c), paragraph 4 of article 8 of the draft RTS, AMF Italia members would like to underline that such requirement could jeopardize the timing of the execution thus affecting the client's best interest and the obtainment of the best possible result for the execution of the order, which is exactly what the provision in comment intends to avoid.

If ESMA decides to retain such a requirement, then it should be mitigated both in terms of frequency (e.g. not on an order-by-order basis), timing and durable medium.

In this respect, one option could be to include the warning in the framework agreement between the client and the investment firm. In this respect, it is worth considering that execution policies already contain warnings alerting about the fact that, in case of specific instructions by the client, then best execution may not be achieved.

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.

AMF Italia members do not believe that the RTS should discipline a further list and explanation of information to be included in the order execution policy.

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)?

AMF Italia members would ask for a clear limitation of the scope of the draft RTS to investment firms executing clients' orders only. Indeed, the provisions of the RTS clearly relate to executing investment firms and are not immediately adaptable to transmitting investment firms.

In addition, AMF Italia members would request that recital 2 of the draft RTS is amended, as investment firms may not be in a position to fully "*ensure that third parties the clients orders are placed with or transmitted to, comply with the requirements in this Regulation*", as they may only be in a position to periodically review their transmission policy.

With reference to article 10 of the draft RTS our members would like to point out the need of combining the implementation and application of the provisions under Directive (EU) of 28

February 2024 - amending MiFID Directive (article 27 included) - in all Member States with the date of application of the RTS in comment.

In fact, Level 2 provisions should apply only after relating Level 1 legislation is implemented and made applicable in all EU Member States because it is essential for the industry participants to have adequate time to implement the new rules and to adapt their internal procedures.

We remain available for any further information or clarification.



Gianluigi Gugliotta
Secretary General