

PUBLIC STATEMENT

Application of the temporary suspension of the obligation to publish RTS 27 reports

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote coordinated action by National Competent Authorities (NCAs) in the context of the temporary suspension of the obligation on execution venues in Article 27(3) of Directive 2014/65/EU (MiFID II)¹. This Public Statement is issued in accordance with Article 31 of Regulation (EU) 1095/2010² (ESMA Regulation).

On 16 February 2021, the European Parliament and the Council adopted Directive (EU) 2021/338³ (amending Directive) which made targeted amendments to MiFID II as part of the Capital Markets Recovery Package, a package of measures aimed at supporting the recovery from the severe economic shock caused by the COVID-19 pandemic.

The amending Directive includes a temporary suspension of the obligation on execution venues in Article 27(3) of MiFID II, as further specified by Commission Delegated Regulation (EU) 2017/575⁴ (RTS 27). That obligation requires execution venues to make available to the public data related to the quality of execution of transactions on their venues (RTS 27 reports).

According to the amending Directive, these reports are rarely read and do not enable investors and other users to make any meaningful comparisons on the basis of the information they contain⁵. The amending Directive also requires the European Commission (Commission) to comprehensively review the adequacy of the RTS 27 reporting requirements.⁶

ESMA and NCAs have observed a lack of clarity among market participants on the application date of this suspension. In particular, whereas Article 1(6) of the amending Directive provides that the requirement to publish RTS 27 reports shall not apply until 28 February 2023, Article

¹ 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 (OJ L 173, 12.6.2014, p. 349).

² 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).

³ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

⁴ Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (OJ L 87, 31.3.2017, p. 152).

⁵ Recital 9. The Commission legislative proposal of the amending Directive also emphasised the urgency to address problems regarding the costly production of best execution reports.

⁶ The Commission shall also comprehensively review the adequacy of the reporting requirement in Article 27(6), as further specified by Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (OJ L 87, 31.3.2017, p. 166) (RTS 28) (RTS 28 reports). However, the requirement to publish RTS 28 reports is not suspended (Article 1(7) of the amending Directive).



4(1) thereof only requires Member States to apply the measures necessary to comply with the amending Directive by 28 February 2022.

The legislative aim, as evidenced by the text agreed as part of the political compromise in December 2020, was to suspend the best execution reports for two years as of the entry into force of the amending directive.

ESMA recognises the aim of the suspension and the specific issues identified in the amending Directive with regard to the usefulness of RTS 27 reports. ESMA therefore expects NCAs not to prioritise supervisory actions towards execution venues relating to the obligation to publish the RTS 27 reports until the date on which the national transposition measures of the amending Directive postpone that obligation in national law.