



July 2024

**AIMA SUMMARY: [ESMA Consultation on the Establishment and Assessment of the Order Execution Policies of Investment Firms](#)**

REQUIREMENTS FOR THE ESTABLISHMENT OF INVESTMENT FIRMS' ORDER EXECUTION POLICIES	
Proposal	Question
<ul style="list-style-type: none"> <li>Require firms to distinguish between a fixed list of different classes of financial instruments based on the <b>classification of financial instruments set out by MiFID II RTS 1 and RTS 2</b>.</li> <li>Categorise the classes of financial instruments as follows:               <ul style="list-style-type: none"> <li>(i) Each <b>country of primary listing for shares</b> in companies to constitute a separate class of financial instruments;</li> <li>(ii) All other financial instruments to be grouped in <b>about 15-20 classes</b> of instruments; and</li> <li>(iii) Allow the <b>clustering of several classes</b> of instruments into a single class.</li> </ul> </li> </ul>	<p>1. Do you agree with the proposed categorisation of classes of financial instruments?</p> <p>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?</p> <p>Please state the reasons for your answers.</p>
<ul style="list-style-type: none"> <li>Require firms to include in their execution policies at least those <b>venues that enable the firms to obtain on a consistent basis the best possible result</b> for the execution of client orders</li> <li>Where firms select <b>only one execution venue</b> to execute client orders for a given class of financial instruments, or for all client orders, require the firm to comply with all relevant requirements in the Regulation.</li> <li>Require firms to <b>select these venues per class of financial instruments, per category of retail and/or professional clients and by accounting for certain additional factors</b> including different order frequencies and values for retail and professional clients respectively and whether the executed financial instruments are EU- or non-EU instruments.</li> </ul>	<p>2. 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?</p> <p>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?</p>

<ul style="list-style-type: none"> <li>• Require firms in their execution policies to <b>categorise the information for each venue they plan to use for executing client orders for each class</b> of financial instruments for which the firms intend to offer order execution services.</li> <li>• Require firms to <b>establish and keep updated a list of venues</b> for the execution of client orders which must: <ul style="list-style-type: none"> <li>(i) Consist of <b>venues authorised by national competent authorities or third country authorities</b>;</li> <li>(ii) Be determined according to the <b>firms’ internal governance procedures</b>; and</li> <li>(iii) Include certain <b>information about the selected venues</b> (or entities performing a similar function in a third country) for executing client orders, including: <ul style="list-style-type: none"> <li>- information about the <b>internal approval of the venue</b> through firms’ governance procedures (e.g., date of approval and name and capacity of the person or name of the governance body that approved the venue);</li> <li>- for which <b>classes of financial instruments</b> the execution venue can be used; and</li> <li>- for which <b>categories of clients</b> the execution venue can be used.</li> </ul> </li> </ul> </li> </ul>	<p>Please also state the reasons for your answer.</p>
<ul style="list-style-type: none"> <li>• When a specific client order may be <b>executed on at least two venues</b>, require a firm to specify in its execution policy certain criteria for its choice of the executing venue and their relative importance.</li> <li>• Require that criteria is specified for (a) <b>each class of financial instruments</b>; (b) <b>retail and professional clients</b>; (c) based on an <b>analysis</b> which includes certain factors, including: <ul style="list-style-type: none"> <li>(i) <b>All costs directly related</b> to the execution of the order, including any fees and commissions charged by the investment firm itself;</li> <li>(ii) As relevant to determine the <b>best possible result for the client</b>: real-time market or historical data on the relevant financial instrument or class of financial instruments to identify the appropriate venue for order execution; and</li> <li>(iii) The <b>characteristics of the order</b>, such as its size and nature.</li> </ul> </li> <li>• Require firms that use an <b>automatic order routing system</b> to describe the main characteristics of the system in its order execution policy.</li> </ul>	<p>3. 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)?</p> <p>If not, what alternative factor would you propose?</p>

## REQUIREMENTS FOR THE ASSESSMENT OF INVESTMENT FIRMS' ORDER EXECUTION POLICIES

Proposal	Question
<ul style="list-style-type: none"> <li>• Require firms to set out, in their order execution policy, the <b>frequency and methodology applied</b> to their continuous or periodic monitoring.</li> <li>• Require firms, as part of their monitoring, to <b>assess all transactions or a representative sample of transactions per class</b> of financial instruments related to specific thresholds.</li> <li>• Require firms to <b>keep track of their order execution policies and order execution arrangements</b> regularly.</li> <li>• Require firms <b>at least annually, or whenever a material change occurs to assess their selected venues and order execution arrangements</b>, including whether the execution venues included in their execution policies allow them to obtain the best possible result for their clients and factors such as the emergence of new execution venues and new functionalities or execution services provided by venues.</li> <li>• Require that assessments:               <ul style="list-style-type: none"> <li>(i) <b>Include a comparison of the prices obtained for client orders with a reference dataset</b> that is based on consolidated tape data, where available, or on an alternative dataset provided that this alternative dataset provides at least the same reference data quality; and</li> <li>(ii) <b>Distinguish explicitly the fees related to the order execution and those charged to the firm</b> (e.g. cost of venue membership) which may impact the choice of venue.</li> </ul> </li> <li>• Require firms, in light of their review results, to update their order execution policies and order execution arrangements and <b>correct any deficiencies within a reasonable period based on the seriousness of the deficiency – a maximum of 3 months</b> from the conclusion of the review.</li> </ul>	<p>4. 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?</p> <p>Please also state the reasons for your answer.</p>
<ul style="list-style-type: none"> <li>• Allow firms to comply with the monitoring requirements by relying on <b>monitoring performed by a third party</b> (e.g., an independent data provider) and require firms to assess the monitoring process set up by the third party.</li> <li>• Allow firms to comply with the assessment requirements by relying on an <b>analysis conducted by a third party</b> (e.g., an independent data provider) and require firms to review the external assessment</li> </ul>	<p>5. 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</p>

<p>thoroughly and to ensure that it is representative for the firm's client base, especially with regard to the instruments and order sizes assessed.</p>	<p>assess the processes of these third parties?</p> <p>Please also state the reasons for your answer.</p>
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<b>REQUIREMENTS FOR FIRMS' ORDER EXECUTION POLICIES RELATED TO CLIENT INSTRUCTIONS AND DEALING ON OWN ACCOUNT EXECUTION POLICIES</b>	
<b>Proposal</b>	<b>Question</b>
<ul style="list-style-type: none"> <li>• Require firms to specify the <b>impact of specific client instructions</b> on the criteria of the venues selected for firms' order execution and their ability to obtain the best possible result for the instructing client.</li> <li>• Require firms to define in their order execution policy how to <b>differentiate between orders with and without specific client instructions</b>. Require firms to describe, at least, that a specific client instruction involves either: <ul style="list-style-type: none"> <li>(i) A <b>choice of one option out of multiple options</b> offered by the investment firm related to a part or aspect of the order; and</li> <li>(ii) An <b>instruction to the investment firm to handle the order in a different way</b> than foreseen by the order execution policy.</li> </ul> </li> <li>• Where firms receive a specific instruction, require firms to <b>treat only the part or aspect of the order specified by the client as a specific client instruction</b>. For all other parts and aspects of the order, require firms to ensure their order execution policy provides that they are processed in the same way as orders without specific instructions.</li> <li>• Where firms offer the <b>client to choose an execution venue</b>, require firms to include details in their order execution policy which encompass: <ul style="list-style-type: none"> <li>(i) An explanation of <b>how the policy prevents inducing a client</b> to choose a specific execution venue; and</li> <li>(ii) A <b>warning to the client</b> immediately prior to placing an order that the client's selection of an execution venue prevent the firm from obtaining the best possible result for the execution of the order.</li> </ul> </li> </ul>	<p>6. 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?</p> <p>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?</p> <p>Please also state the reasons for your answer.</p>

<ul style="list-style-type: none"> <li>• Require that firms specify in their order execution policies the arrangements to ensure that they only <b>deal on own account</b> when executing client orders, where all of the following conditions are met: <ul style="list-style-type: none"> <li>(i) the order execution policy of the investment firm <b>expressly provides for the option</b> of executing client orders on own account; and</li> <li>(ii) executing client orders on own account <b>provides the best possible result</b> for their clients.</li> </ul> </li> <li>• Require firms to set out in their order execution policies steps to ensure <b>compliance with certain organisational and methodological disclosure requirements</b>, including: <ul style="list-style-type: none"> <li>(i) to <b>identify, prevent and manage adequately the conflicts of interest</b> related to dealing on own account when executing client orders; and</li> <li>(ii) to <b>ensure the fairness of the price proposed to the client when dealing on own account in OTC products</b>, in accordance with Article 64(4) of Commission Delegated Regulation (EU) 2017/565 as regards organisational requirements and operating conditions for investment firms.</li> </ul> </li> </ul>	<p>7. 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?</p> <p>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?</p> <p>Please also state the reasons for your answer.</p>
	<p>8. 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)?</p>