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COVID 19: ESMA SUGGESTS REGULATORY FORBEARANCE IN RELATION TO BEST EXECUTION REPORTING DEADLINES

To Our Clients and Friends:

On 31 March 2020, the European Securities and Markets Authority (“ESMA”) issued a public statement^[1] to clarify issues regarding the publication by execution venues and firms of best execution reports required by RTS 27 and RTS 28 of MiFID II. This client alert provides an overview of ESMA’s public statement and its consequences for execution venues and firms.

What are the best execution reporting requirements?

Execution venues are required to periodically published information in accordance with RTS 27. This information is intended to provide the public and firms with relevant data to measure the quality of execution on execution venues. Firms are also required to periodically publish information under RTS 28 to enable the public and investors to evaluate the quality of a firm’s execution practices by requiring publication of information about how and where the firm has executed client orders.

Why is ESMA suggesting regulatory forbearance in relating to best execution reporting obligations?

ESMA has stated it recognises that the exceptional circumstances created by the COVID-19 outbreak means that execution venues and firms may need to deprioritise efforts for the publication of RTS 27 and RTS 28 reports concerning 2019.

ESMA has decided to issue the public statement to promote co-ordinated action by national competent authorities (“NCAs”) and to provide clarity to execution venues and firms subject to the disclosure requirements. ESMA recommends that NCAs take into account the current climate by considering the possibility execution venues and firms can report in line with an amended reporting timetable.

What changes has ESMA suggested to best execution reporting deadlines?

Having regard to the coronavirus outbreak, ESMA’s public statement encourages NCAs not to prioritise supervisory action against execution venues and firms in relation to the latest best execution reporting deadlines. ESMA also encourages NCAs to adopt a risk-based approach in the exercise of their supervisory powers in enforcement of RTS 27 and RTS 28 concerning these deadlines.

Requirement	Original disclosure date	New suggested disclosure date
RTS 27 disclosure	For execution venues, 31 March 2020 in respect of RTS 27 reports on the quarterly information regarding the reporting period from 1 October to 31 December 2019.	Execution venues unable to publish RTS 27 reports due by 31 March 2020 may only be able to publish them as soon as reasonably practicable after that date and no later than by the following reporting deadline (i.e. 30 June 2020).
RTS 28 disclosure	For firms, 30 April 2020 in respect of RTS 28 reports on the annual information regarding the reporting period of 2019.	Firms may only be able to publish the RTS 28 reports due by 30 April 2020 on or before 30 June 2020.

What steps should execution venues and firms take now?

ESMA has recommended that execution venues and firms should keep records of any decision made in relation to any delay to the publication of RTS 27 or RTS 28 disclosures. ESMA’s public statement also reminds firms of their core obligations to achieve best execution for clients and to ensure fair order handling and allocations during current market volatility. Execution firms and firms should also take note of any further publications by their respective NCAs in relation to the best execution reporting obligations.

[1] https://www.esma.europa.eu/sites/default/files/library/esma35-36-1919_esma_statement_on_covid-19_and_best_execution_reports.pdf



Gibson Dunn’s lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 pandemic. For additional information, please contact any member of the firm’s Coronavirus (COVID-19) Response Team.

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