Connecting the dots between Article 27, RTS 27, and RTS 28

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With MiFID II now underway, **investment firms are faced with the challenge of upholding more stringent investor protection standards**, including creating detailed execution policies, implementing execution quality oversight procedures, and publicly disclosing their first RTS 28 reports by 30 April, 2018. It is clear that buyside and sellside firms alike must pay careful attention to the language in Articles 27 and 65.6 of the directive, and the related RTS 28, but it may be much less obvious that RTS 27 is also critically important to these firms – even though they don't have to report it themselves.

Article 27 (and 65.6) and RTS 27 intersect on the subject of execution factors. Article 27 carefully lays out the requirement that firms have to create an execution policy that includes "the relative importance of different factors" including "price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order," and must also monitor execution quality relating to the same factors. However, ESMA does not prescribe the relative importance of those factors at all – that task is left to the investment firms, because the importance of each factor depends on the type of business conducted by the firms.

To further complicate matters, Articles 27 and 65.6 do not define the execution factors listed, or statistics that can be used to monitor them and neither does RTS 28. How, then, are investment firms supposed to rank and monitor execution factors without clear definitions or statistical measures?

This is where RTS 27 comes into play.

RTS 27, like RTS 28, originates from the investor protection guidelines laid out in Article 27. And, while RTS 27 only directly applies to trading venues who must periodically publish "data relating to the quality of execution," it indirectly applies to investment firms because it not only defines execution factors, but also provides more than fifty statistics to be used to quantify those factors. The definitions of the factors contained in RTS 27 are precisely what investment firms must consider when creating their execution policies, and the related statistics form the basis of the oversight process that ensures the firms' execution decisions are in keeping with their policies.

Therefore, firms should look to take certain steps to comply with best execution obligations.

3 vital steps to best ex compliance

1. **Create an execution policy pursuant to Article 27** (or 65.6) of MiFID II that includes the relative importance it places on specific execution factors defined in RTS 27.

2. **Implement an oversight process** that utilizes the quantitative statistics described in RTS 27 to monitor execution quality as it relates to their chosen factors.

3. **Publish a public RTS 28 report** that demonstrates the use of the best trading venues for execution pursuant to the factor rankings identified in their execution policy.

Once these steps have been taken a firm can feel confident that it is meeting its obligation to ensure best execution, and if it so desires, take additional measures to qualify and quantify execution quality in whatever way it feels will benefit its customers. Indeed, it is quite possible that **these policies and procedures will, over time, turn into more than simple regulatory obligations and become critical components in how an investment firm demonstrates the value of its services** – not just to its customers and regulators, but also to prospective clients and the investment industry at large.

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