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## MEMORANDUM ON "BEST EXECUTION" OF SPANISH LISTED EQUITIES IN BME UNDER MIFID II

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### 1. BACKGROUND CONSULTATION

Bolsas y Mercados Españoles Sociedad Holding de Mercados y Sistemas Financieros, S.A. (hereinafter, "BME"), has requested FinancialReg360, S.L. (hereinafter "FinReg") a memorandum explaining the new obligations that firms have to meet in order to comply with "best execution" requirements for Spanish listed equities under MiFID II<sup>1</sup>.

Specifically, this memorandum seeks to clarify whether, after the enter into force of MiFID II, on January 3, 2018, firms should give access to execution venues other than BME to fulfil its "best execution" obligations in Spanish listed stocks.

### 2. EXECUTIVE SUMMARY

"Best execution" is the obligation of a firm, when executing orders on behalf of clients, to take all reasonable steps to obtain the best possible result.

MiFID I<sup>2</sup> already included within its scope "best execution".

"Best execution" does not only seek to protect investors (mainly retail investors), but also to foster market efficiency by improving the functioning of execution venues. To this end, it pursues to promote greater competition among venues.

Part of the best execution regulation remains the same in MiFID II as with MiFID I:

- MiFID II does not change the factors to be considered by intermediaries to obtain the best possible result for their clients and, thus, to select the execution venues, these being: *"price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order"*.
- MiFID II does not alter the "total consideration" factor when executing retail client orders (ie, the price of the instrument and the costs related to its execution).

Thus, best execution factors have not been changed since MiFID I. However, best execution measures under MIFID II will be more burdensome for investment firms. This is because:

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<sup>1</sup> MiFID II is: 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 ("MiFID II Directive") and REGULATION (EU) No 600/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("MiFIR").

<sup>2</sup> MiFID I is: DIRECTIVE 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on markets in financial instruments ("MiFID I Directive"), Commission Directive 2006/73/EC implementing Directive 2004/39/EC as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ("MiFID I Level 2 Directive").

- There is an increased burden on firms to take all "sufficient" steps, rather than all "reasonable" steps, to obtain the best possible result for the client. MiFID II also asks firms to demonstrate that they have properly implemented these steps for the selection of execution venues, not only towards its customers (as required MiFID I), but also against the competent authorities.

This obligation, however, does not translate into the need of giving access, for each financial instrument class, to many execution venues. It may be "sufficient" counting only with one, two or a larger number of venues. Sufficiency will depend on whether there is effective competition or not between execution venues.

- Under MiFID II firms will have to publish their top five execution venues for the previous year, along with specific data relating to the quality of execution of transactions on that venue.

This obligation, does not imply either the need to give access to 5 venues per each class of financial instrument. Firms may use fewer or only one venue per financial instrument class, as long as that or those venues can ensure the best possible result for the clients.

Under the above and in relation to Spanish listed equities, if BME can guarantee the "best execution" in accordance with the factors applicable to the different types of customers, MiFID II would not require firms to give access to other execution venues.

### 3. MEMORANDUM ON “BEST EXECUTION” UNDER MIFID II

In order to answer the question raised by BME, that is, if with MiFID II<sup>3</sup> it is necessary that intermediaries provide access to alternative centres to BME for the execution of Spanish listed equities, it is necessary to examine in detail the requirements of MiFID II on "best execution" and compare them with those of MiFID I<sup>4</sup>.

#### A. FACTORS FOR THE SELECTION OF EXECUTION VENUES

When implementing best execution<sup>5</sup>, firms must take into account a number of different factors. Article 27.1 first paragraph of MiFID II sets out these factors:

- price,
- costs,
- speed,
- likelihood of execution and settlement,
- size,
- nature
- any other consideration relevant to the execution of the order.

These factors have to be considered for all types of clients (retail and professional clients). Intermediaries must assign relative importance of these factors for each type of customer. In the specific case of retail customers, firms will have to consider the "total consideration" factor as detailed in the following section of this memorandum.

Applying these factors to obtain the best execution does not imply the need to go to various execution venues. In fact, the possibility of going to a single execution venue is recognised *ad sensu contrario* in article 27.1 third paragraph of MiFID II stating that:

*“For the purposes of delivering best possible result in accordance with the first subparagraph [factors we have listed in this section of the memorandum], where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm’s order execution policy that is capable of executing that order, the investment firm’s own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.”*

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<sup>3</sup> The “best execution” obligation is established in the article 27 of MiFID II Directive. Moreover, it shall be taken into consideration the following draft of regulation (pending to be approved: (i) art 64 of the draft Delegated Regulation of 25 April 2016 (developing the factors of best execution); (ii) art 65 of the draft Delegated Regulation (Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client); (iii) Draft of RTS 27 with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions and (iv) Draft RTS 28 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.

<sup>4</sup> For the purposes of comparison of the obligations established in MiFID I and MiFID II, please find a comparison in the Annex to this Memorandum.

<sup>5</sup> Additionally, regarding “best execution policies”, article 27.7 of MiFID II Directive, includes the obligation to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies, in line with MiFID I. Notwithstanding, MiFID II includes the obligation of the execution venues to publish the execution quality data on an annual basis.

Therefore, access to one or more execution venues will depend on whether there is competition between centres. If there is competition among venues, it will be necessary to give access to these competing venues. If one venue alone can guarantee "best execution" it will be enough to give access to this centre.

## **B. FACTORS FOR THE SELECTION OF EXECUTION VENUES WHEN DEALING WITH RETAIL CLIENTS**

Article 27.1 second paragraph of MiFID II states that best execution for retail client orders is assessed on the basis of 'total consideration'. The "total consideration" is not a MiFID II novelty as it was already comprised MiFID I though it was included in the Level 2 Directive (in Article 44 of MiFID I Level 2). With MiFID II this obligation is included in Level 1 Directive, however, for legal purposes, the level of enforcement is the same as both are rules to be implemented into the laws of the Member States.

Under MiFID I and II, where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the "total consideration". Total consideration represents:

- *"the price of the financial instrument and*
- *the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order."*

The other factors to obtain best execution (speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs) may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the retail client.

Regarding the costs to be included in the calculation of best execution in terms of "total consideration", Recital 93 of MiFID II clarifies the following:

*"For the purposes of determining best execution when executing retail client orders, the costs relating to execution should include an investment firm's own commissions or fees charged to the client for limited purposes, where more than one venue listed in the firm's execution policy is capable of executing a particular order. In such cases, the firm's own commissions and costs for executing the order on each of the eligible execution venues should be taken into account in order to assess and compare the results for the client that would be achieved by executing the order on each such venue. However, it is not intended to require a firm to compare the results that would be achieved for its client on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same client by any other investment firm on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a firm to compare the differences in its own commissions which are attributable to differences in the nature of the services that the firm provides to clients. "*

On the interpretation of costs, the FCA thematic review on best execution and payment for order flow published in July 2014<sup>6</sup> ("Thematic Review of FCA") includes a breakdown of the costs to be taken into account. The Thematic Review of the FCA distinguishes between:

- *"Explicit external costs which include commissions, fees, taxes, exchange fees, clearing and settlement costs, or any other costs passed on to the client by intermediaries participating in the transaction. Explicit external costs are clearly subject to the best execution obligation.*
- *Explicit internal costs represent an investment firm's own remuneration (including a commission or spread) for completing a transaction. These internal commissions and costs for executing an order must be taken into account in assessing where to execute the order, where there is more than one competing venue available. Thereafter, when judging whether best execution has been given on an individual transaction, firms can omit their own fees and charges from the assessment. The best execution obligation is not intended to require a firm to compare the results that would be achieved for its clients on the basis of its own commissions and fees with those of another firm's retail commissions or fees, which may be structured differently or which may relate to differences in the nature of the services provided to clients. This means that a firm need not reduce its commission to the lowest level in the market in order to deliver best execution when dealing with retail clients."*

### C. NEED TO TAKE "SUFFICIENT STEPS" TO OBTAIN BEST EXECUTION

As already indicated, the factors to be considered for the selection of execution venues are not modified with respect to MiFID I. Although there is no change in the factors, MiFID II increases the burden on firms to take all "sufficient" steps, rather than all "reasonable" steps, to obtain the best possible result for the client.

The terms "reasonable" and "sufficient", used by MiFID I and II, respectively are legal concepts and to date there is little written about what should be understood as "sufficient steps". In order to interpret this term, we must turn to two documents: The Thematic Review of the FCA on "best execution" published in 2014 and the questions and answers on MiFID II/MiFIR document ("Q&A") published by ESMA in October 2016.

The Thematic Review of the FCA<sup>7</sup> explained that the reason for using the term "sufficient" was that "[...] we have identified failings, they are in relation to the steps that firms have taken to obtain best execution on a consistent basis, rather than for individual transactions. Overall, very few firms could provide evidence that the steps they were taking were sufficiently rigorous to consistently obtain the best possible result for their clients." This FCA interpretation means, in practice, the need for firms to strengthen their "best execution" procedures.

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<sup>6</sup> Thematic review TR 14/13, Best execution and payment for order flow, July 2014, de la FCA – Financial Conduct Authority

<sup>7</sup> FSA in the Thematic Review explains that: "[...] we have identified failings, they are in relation to the steps that firms have taken to obtain best execution on a consistent basis, rather than for individual transactions. Overall, very few firms could provide evidence that the steps they were taking were sufficiently rigorous to consistently obtain the best possible result for their clients."

In the same line ESMA in its Q&A on MiFID II states<sup>8</sup> that "sufficient steps" is an additional requirement for compliance with the obligation of best execution that "reasonable steps":

*“MiFID I required firms to “take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order”. MiFID II now instead requires firms to “take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.”*

*Whilst firms remain subject to the same overarching obligation to obtain the best possible results on a consistent basis when executing client orders, the requirement for “sufficient” steps sets a higher bar for compliance than “reasonable” steps.*

*When designing their execution policies and establishing their execution arrangements, firms will have to ensure that the intended outcomes can be successfully achieved on an on-going basis. This is likely to involve the strengthening of front-office accountability and systems and controls according to which firms will ensure that their detection capabilities are able to identify any potential deficiencies. This will require firms to monitor not only the execution quality obtained but also the quality and appropriateness of their execution arrangements and policies on an ex-ante and ex-post basis to identify circumstances under which changes may be appropriate. An example of ex-ante monitoring would be to ensure that the design and review process of policies is appropriate and takes into account new services or products offered by the firms. Accordingly, an ex-post monitoring may be to check whether the firm has correctly applied its execution policy and if client instructions and preferences are effectively passed along the entire execution chain when using smart orders routers or any other means of execution.*

*Firms’ processes might involve some combination of front office and compliance monitoring and could use systems that rely on random sampling or exception reporting. There should be channels in place to ensure that the results of ongoing execution monitoring are escalated to senior management and/or relevant committees, and fed back into execution policies and arrangements to drive improvements in the firm’s processes.”*

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<sup>8</sup> Q&A ESMA: “MiFID I required firms to “take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order”. MiFID II now instead requires firms to “take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order”.

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*Firms’ processes might involve some combination of front office and compliance monitoring and could use systems that rely on random sampling or exception reporting. There should be channels in place to ensure that the results of ongoing execution monitoring are escalated to senior management and/or relevant committees, and fed back into execution policies and arrangements to drive improvements in the firm’s processes.”*

In light of these FCA and ESMA documents, the need to have in place sufficient steps does not translate into the need to give access for each financial instrument, to different execution venues. It may be a "sufficiently", provided that *front office* procedures and compliance processes are strengthened, counting only with one, two or a larger number of venues. Sufficiency will depend on whether or not that unique center is the best in terms of the factors listed above "best execution" or if the different venues are, under those criteria, effective competition for the financial instrument in question to provide similar results.

#### **D. NEED TO DEMONSTRATE BEST EXECUTION**

The obligation to show "best execution" increases in MiFID II. In addition to being able to demonstrate to the client that the entity has complied with its execution policy, firms will have to be able to demonstrate this to the relevant national competent authority.

This reinforcement of the obligation to demonstrate best execution does not imply that firms should provide access to a number of execution venues.

#### **E. NEED TO MAKE PUBLIC THE TOP FIVE EXECUTION VENUES**

One of the main novelties of MiFID II in relation to the scope of the "best execution" is that firms are required to summarize and publish annually for each class of financial instruments, the top five execution venues in terms of trading volumes, where they executed client orders in the preceding year as well as information on the quality of performance obtained.

This obligation to publish the top five execution venues, does not mean necessarily that firms need to go to at least five centres for each type of financial instrument. In fact, a firm might have only one execution venue for a class of financial instrument if it clearly represents the best alternative to provide the best possible result for their clients.

In this line, ESMA, in its technical advice to the European Commission on the implementation of MiFID II and MiFIR<sup>9</sup>, stresses that: "*An investment firm that executes orders or transmits or places orders with other entities for execution can include a single execution venue or entity in its policy if it is able to show that this allows it to satisfy the overarching best execution requirement. The investment firm shall reasonably expect that the execution venue or entity it selects will enable it to obtain results for its clients that are at least as good as the results that it reasonably could expect from using alternative execution venues or entities. This reasonable expectation must be supported by relevant data or information published under Article 27 of MiFID II or by other internal analysis conducted by the investment firm.*"

Therefore, if a firm can demonstrate that a single execution venue allows you to fulfil its "best execution" obligations it does not need to go to alternative venues.

ESMA states in its Q&A document on MiFID and MiFIR published in December 2016 that "*MIFID II does not prohibit firms from selecting only one execution venue to execute client orders in a given class of financial instruments where they are able to demonstrate that such a choice*

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<sup>9</sup> ESMA Technical advice to the Commission on MiFID II and MiFIR. 19 december 2014

*enables them to consistently get the best results for their clients. Since MiFID I was implemented there has been a sharp proliferation of execution venues leading to an increased fragmentation of the market. ESMA expects firms to be aware of the evolving competitive landscape in the market for execution venues operators and therefore to take into consideration the emergence of new players, new venues functionalities or execution services to determine whether or not any of these factors would support to include only one execution venue in their execution policy.”*

ESMA also states that: *“In order act in the best interests of its clients, firms will need to regularly assess the market landscape to determine whether or not there are alternative venues that they could use. This assessment will benefit from the new metrics available under RTS 27 and from any other relevant source of data [...]”. “Finally, using a single venue should not lead firms to be “over-reliant” on the single venue. Using a single venue does not diminish a firm’s responsibility to monitor the quality of execution. Nor does it mean that merely executing client orders on that venue will allow the firm to discharge its best execution obligations. When using only a single venue, the specific way that the firm executes the order may be just as important in achieving best execution [...]”.*

#### **4. CONCLUSION**

In conclusion, for those financial instruments in which there is competition between execution venues, firms will have to provide simultaneous access to them to always offer the "best execution" to clients. The need to go to one or more execution venues (and the number of centres to turn to) will be determined by competition between venues. Thus, if there is competition between various venues, it will be necessary to (i) give access to these various centres in competition and (ii) publish all them annually. If there is a venue that standalone allows to ensure the best possible outcome for clients it will be sufficient to (i) only go to this venue and (i) publish it annually.

Under the above and in relation to Spanish listed equities, if BME can guarantee the "best execution" in accordance with the factors applicable to the different types of customers, MiFID II would not require firms to give access to other execution venues.

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In Madrid February 20<sup>th</sup> 2017,

A handwritten signature in blue ink, appearing to read "Sara Gutiérrez Campiña".

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Sara Gutiérrez Campiña  
Partner.- finReg

The above, except for error or omission, is our opinion on the subject matter, without prejudice to any other better opinion based on law that would contradict the conclusions reached.

ANNEX 1: BEST EXECUTION COMPARATIVE MIFID I VS MIFID II

MiFID I Directive (Level 1 and 2)	MiFID II Directive
<b>Art 21 MiFID I level 1 Directive, Art. 44 MiFID I Level 2 Directive</b>	<b>Art 27 MiFID II Directive</b>
<b>Obligation to execute orders on terms most favourable to the client</b>	<b>Obligation to execute orders on terms most favourable to the client</b>
<p><b>Art. 21.1. MiFID I Directive Level 1:</b> 1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.</p>	<p>1. Member States shall require that investment firms take all <a href="#">sufficient steps</a> to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, where there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.</p>
<p><b>Art. 44 MiFID I Directive Level 2:</b> 3. Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.</p>	<p>Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.</p>

MiFID I Directive (Level 1 and 2)	MiFID II Directive
<p><b>Art. 44 MiFID I Directive, Level 2:</b>            For the purposes of delivering best execution where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.</p>	<p>For the purposes of delivering best possible result in accordance with the first subparagraph where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm's order execution policy that is capable of executing that order, the investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.</p>
	<p><i>2. An investment firm shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue which would infringe the requirements on conflicts of interest or inducements set out in paragraph 1 of this Article and Article 16(3) and Articles 23 and 24.</i></p>
	<p><i>3. Member States shall require that for financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No 600/2014 each trading venue and systematic internaliser and for other financial instruments each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis and that following execution of a transaction on behalf of a client the investment firm shall inform the client where the order was executed. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.</i></p>
<p><b>Art 21.2. MiFID I Directive Level 1:</b> Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with paragraph 1..</p>	<p>4. Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular, Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with paragraph 1.</p>

MiFID I Directive (Level 1 and 2)	MiFID II Directive
<p><b>Art. 21.3. MiFID I Directive Level 1:</b> The order execution policy shall include, in respect of each class of instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.</p>	<p>5. The order execution policy shall include, in respect of each class of financial instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.</p>
<p>Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. Member States shall require that investment firms obtain the prior consent of their clients to the execution policy.</p>	<p>Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the investment firm for the client. Member States shall require that investment firms obtain the prior consent of their clients to the order execution policy.</p>
<p>Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market or an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.</p>	<p>Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a trading venue, the investment firm shall, in particular, inform its clients about that possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a trading venue. Investment firms may obtain such consent either in the form of a general agreement or in respect of individual transactions.</p>
	<p><i>6. Member States shall require investment firms who execute client orders to summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained.</i></p>

MiFID I Directive (Level 1 and 2)	MiFID II Directive
<p><b>Art. 21.4. MiFID I Directive Level 1:</b> Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy..</p>	<p>7. Member States shall require investment firms who execute client orders to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, <a href="#">taking account of, inter alia, the information published under paragraphs 3 and 6</a>. Member States shall require investment firms to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.</p>
<p><b>Art. 21.5. MiFID I Directive Level 1:</b> Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy.</p>	<p>8. Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the investment firm's execution policy <a href="#">and to demonstrate to the competent authority, at its request, their compliance with this Article..</a></p>

MiFID I Directive (Level 1 and 2)	MiFID II Directive
<p><b>Art. 21.6. MiFID I Directive Level 1:</b> In order to ensure the protection necessary for investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 3 and 4, the Commission shall adopt implementing measures concerning:</p> <p>(a) the criteria for determining the relative importance of the different factors that, pursuant to paragraph 1, may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;</p> <p>(b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders;</p> <p>(c) the nature and extent of the information to be provided to clients on their execution policies, pursuant to paragraph 3.</p> <p>The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).</p>	<p>9. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning:</p> <p>(a) the criteria for determining the relative importance of the different factors that, pursuant to paragraph 1, may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;</p> <p>(b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders;</p> <p>(c) the nature and extent of the information to be provided to clients on their execution policies, pursuant to paragraph 5.</p>

MiFID I Directive (Level 1 and 2)	MiFID II Directive
	<p><i>10. ESMA shall develop draft regulatory technical standards to determine:</i></p> <p><i>(a) the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with paragraph 3, taking into account the type of execution venue and the type of financial instrument concerned;</i></p> <p><i>(b) the content and the format of information to be published by investment firms in accordance with paragraph 6.</i></p> <p><i>ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.</i></p> <p><i>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.</i></p>