



Frankfurt am Main,  
5. März 2015

**Publication duties for portfolio managers placing orders with other entities for execution – addendum to BVI's position paper dated 11 February 2015**

*ESMA proposes in its technical advice on best execution (para. 17 on page 180) that portfolio managers and other firms transmitting orders to other entities for execution shall publish on an annual basis the identity of the top five brokers in terms of transaction volumes for each class of financial instruments and information on the quality of execution obtained. Such information shall be “consistent” with the information to be published by brokers under RTS 7 implementing Article 27(10)(b) of MiFID II.*

**In our opinion, these requirements proposed by ESMA are disproportionate, since they are extremely burdensome for portfolio managers, but of little value to investors. They also lack a legal basis in the Level 1 text and were not even subject to public consultation. On these grounds, BVI suggests not amending Article 45 of the Implementing Directive in line with ESMA's advice.**

Arguments:

The cost-benefit analysis of this approach can never be favourable. Portfolio managers would need to analyse execution details obtained from the top five brokers for each class of financial instruments. ESMA's proposal for RTS 7 currently under consultation requires that quantitative details and analyses underpinning the assessment of execution quality are drawn up and published for 39 different classes of instruments. Multiplied by the top five brokers, portfolio managers could be obliged – in an extreme case – to provide nearly 200 (!) quality assessments in terms of execution.

On the other hand, there seems to have been no market testing to determine whether the proposed information is necessary and understandable for clients in order to assess the conduct of the appointed manager. Article 24(5) of MiFID II does require that information disclosed to clients under Article 24(4) (which is the Level 1 basis for ESMA's advice) is provided in a comprehensible form in such a manner that clients are reasonably able to understand it and take decisions on an informed basis. Looking at the details set out in RTS 7 of ESMA's consultation paper, it would seem that these criteria are not met.

More generally, there is no indication in the Level 1 text that end investors relying on appointed portfolio managers to take investment decisions and route the order to a suitable broker should be provided with such level of detail in terms of order execution. The relevant Level 1 requirement in Article 27(6) is aimed solely at firms executing orders and obliges them to provide their clients – be it professionals such as portfolio managers or end investors – with more detailed and standardised information on best execution. Hence, it is not appropriate to invent information duties basically mirroring the extensive information regime for executing firms solely on the basis of the general conduct of business rules at Level 2. Article 24(4) used by ESMA as a legal basis for its advice relates to information to be sent to clients and thus cannot be used for imposing publication duties modelled after Article 27(6).

At utmost and already fulfilling the Level 1 requirements, portfolio managers could be required to perform a general assessment of the quality of execution obtained from brokers as part of their regular reporting to clients.