



17<sup>th</sup> January 2024

Dear Ms. Ross,

Dear Ms. Cazenave,

### **Best Execution reports under RTS 28**

The ACI Financial Markets Association (ACI FMA), Association for Financial Markets in Europe (AFME), Alternative Investment Management Association (AIMA), European Association of Co-operative Banks (EACB), European Association of Public Banks (EAPB), European Banking Federation (EBF), European Fund and Asset Management Association (EFAMA), European Savings and Retail Banking Group (ESBG), Futures Industry Association (FIA), International Swaps and Derivatives Association (ISDA), International Capital Market Association (ICMA), Managed Funds Association (MFA), hereafter referred to as ‘The Associations’ are writing to you regarding the application of annual best execution reports in accordance with RTS 28 on 30 April 2024.

The MiFIR/D Review agreement between the European Parliament and the Council of 16 January 2024 includes the deletion of MiFID Article 27(6), the legal basis for RTS 28 annual best execution reports. Given MiFID is a directive which requires transposition into national law, which will not be finalised prior to the 30 April due date for best execution reports, firms would need to produce best execution reports at least one more time before this requirement is permanently deleted.

In the spirit of the burden reduction agenda and in consideration of the limited benefit of RTS 28 reports on investor protection, we kindly ask ESMA and NCAs to address this timing gap issue by publishing a statement, clarifying that NCAs do not prioritise supervisory actions with respect to firms not producing RTS 28 going forward. We would also like to stress that we

appreciate the ESMA statement of December 2022 in relation to RTS 27 quarterly best execution reports.

### **The impact of RTS 28 on investor protection**

We support the decision of the co-legislator to permanently delete the requirement to publish RTS 27 and 28 reports. We believe that this decision is a welcome administrative burden reduction.

Both reports have been proven to be costly to implement while not providing meaningful protection for investors. The Associations agree with the rationale explained in Recital 7 of the MIFID amending regulation: *“Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports...”*

In the context of derivatives transactions, it should be noted that wholesale market participants make use of more sophisticated methods to ensure best execution whilst retail client participation is close to zero, i.e. RTS 27 and 28 for derivatives do not, in our view, significantly contribute to investor protection. In relation to financial markets more broadly, publication of the Top 5 execution venues per asset class does not give clients any insights into how a firm has conducted transactions. However, the production of the reports is very data intensive and exposes firms to disproportionate administrative costs.

Indeed, for all asset classes, it makes little sense to insist on the production of this report when firms’ resources are already stretched with the new EMIR reporting standards coming into force in April, and preparation for shortening of the settlement cycle in the US in May 2024.

### **The need for regulatory forbearance**

Whilst we understand that ESMA and NCAs cannot disapply EU law, we request that ESMA publish guidance to national competent authorities to exercise their supervisory powers in relation to RTS 28 reports in a proportionate and risk-based manner until the transposition of MIFID into national law has been conducted. This would save the industry unnecessary administrative burden and resources, which could be directed towards more meaningful methods to ensure best execution.

We remain at your disposal if you would like to discuss this topic.



Kim Winding Larsen, President of ACI FMA



Adam Farkas, CEO of AFME



Jack Inglis, CEO of AIMA



Nina Schindler, CEO of EACB



Marcel Roy, Secretary-General of EAPB



Wim Mijs, CEO of EBF



Tanguy van de Werve, Director General of EFAMA



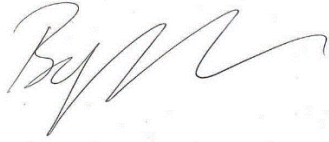
Peter Simon, Managing Director of ESBG



Walt Lukken, President and CEO of FIA



Scott O'Malia, CEO of ISDA



Bryan Pascoe, CEO of ICMA



Bryan Corbett, President and CEO of MFA

### **About ACI FMA**

ACI Financial Markets Association ("ACI FMA") is a global non-political, non-profit association of wholesale financial market participants. ACI FMA was established under the French Law of 1901 and based on mutual recognition of markets professionals, with the objective of developing the profession, without discrimination of any sort.

Since 1955, ACI FMA has represented the interests of individuals in professional trading, broking, operations, regulatory and compliance activities in global financial markets.

Its main mission is to be a leading, global association of wholesale financial markets professionals, contributing to market development through education, best market practices, technical advice, and networking events.

Focused on three core values of Membership, Education and Ethical Conduct, ACI FMA is committed to supporting market participants to operate at the highest standards of ethical conduct and best market practice. Specifically, these values represent:

- Membership: ACI FMA counts over 9,000 individual members representing 60 National Associations globally
- Education: Accredited, portable qualification and certification of professional and ethical standards to market participants worldwide
- Ethical Conduct: ACI FMA members are expected to maintain the highest ethical conduct in adherence to global Codes relevant to them.

ACI FMA members are proud to represent individual responsibility, and benefit from a network of global peers who place great emphasis on the best possible practices in our profession, in the same way as modern regulatory regimes and industry codes.

Through cooperation with ACI FMA, an entity is able to demonstrate that concrete steps are being taken to ensure all the staff have been trained to the highest ethical standards of conduct, and that they understand their individual obligation.

ACI FMA members are longstanding proponents and influencers of ethical conduct and good market practices to financial markets professionals.

### **About AFME**

AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association).

### **About AIMA**

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US\$2.5 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, [www.aima.org](http://www.aima.org)

### **About EACB**

The European Association of Co-operative Banks (EACB) is the voice of cooperative banks in Europe. It represents, promotes, and defends the common interests of its 26 member institutions in banking as well as cooperative legislation. With 2,700 banks and 40,000 branches, cooperative banks are widely established across the European Union and play a vital role in its financial and economic system. They have a longstanding tradition serving their 227 million customers, mainly consumers, retailers, and communities. An important task of the EACB is to raise awareness on the unique characteristics of the cooperative business model: democracy, transparency, and proximity. In Europe, cooperative banks represent 89 million members, providing employment to 720,000 individuals and maintaining an average market share of approximately 20%.

### **About EAPB**

The European Association of Public Banks (EAPB) gathers member organisations (financial institutions, funding agencies, public banks, associations of public banks and banks with

similar interests) from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders. With a combined balance sheet total of about EUR 3,500 billion and a market share of around 15%, EAPB members constitute an essential part of the European financial sector.

### **About EBF**

The European Banking Federation is the voice of the European banking sector, uniting 33 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about 2,7 million people.

### **About EFAMA**

EFAMA is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the authoritative EFAMA Fact Book. More information is available at [www.efama.org](http://www.efama.org)

### **About ESBG**

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 20 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 873 banks, which together employ 610,000 people driven to innovate at 41,000 outlets. ESBG members have total assets of €6.4 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at [www.wsbi-esbg.org](http://www.wsbi-esbg.org).

### **About FIA**

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of

systemic risk in global financial markets. For more information about FIA and its activities: <http://www.fia.org/>

### **About ICMA**

ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels, and Hong Kong, serving over 610 members in 67 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

### **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org). Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

### **About MFA**

Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 170 member firms, including traditional hedge funds, credit funds, and crossover funds, that collectively manage nearly €2.8 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.