

CESR

16 March 2007

EAPB position on CESR's consultation on

Best execution under MiFID

The European Association of Public Banks (EAPB) represents the interests of 25 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

The EAPB would like to thank CESR for the opportunity to comment on its consultation paper "Best execution under MiFID". The EAPB would very much appreciate CESR considering these comments and taking them into account.

Before answering the specific questions CESR poses, the EAPB would like to make some general remarks.

A. General remarks

First and foremost, the EAPB would like to thank CESR for the – in large parts – very practical transposition guidance set out in the present consultation paper.

Nevertheless, we would like to draw CESR's attention to the fact that the new detailed requirements for the establishment of systematic arrangements for best execution of client orders constitute a great challenge for investment firms. The new requirements might bring about considerable administrative burdens which eventually might cause a respective increase in costs of the order processing. It is not yet clear, whether these efforts and costs will actually be compensated by an increase in competition, reflected in lower prices and higher quality of order processing. Keeping administrative costs at a low level is important for both the industry and clients.

Therefore, an interpretation of the new provisions on Level 3 which hinders a flexible application or which even results in an extension of the provisions has to be avoided.

Against this background, please find our answers to the specific questions posed in the consultation paper in the following:

B. CESR's questions

1) *Do respondents agree with CESR's views on:*

- *the main issues to be addressed in an (execution) policy? Are there any other major aspects or issues that should ordinarily be included in an (execution) policy?*
- *the execution policy being a distinct part of a firm's execution arrangements for firms covered by Article 21?*
- *the execution policy under Article 21 being a statement of the most important and / or relevant aspects of a firm's detailed execution arrangements?*

We do agree with CESR's view on these points.

2) *For routine orders from retail clients, Article 44(3) requires that the best possible result be determined in terms of the "total consideration" and Recital 67 reduces the importance of the Level 1 Article 21(1) factors accordingly. In what specific circumstances do respondents consider that implicit costs are likely to be relevant for retail clients and how should those implicit costs be measured?*

The risk of partial execution can be considered as implicit costs. Execution venues having a low risk in this respect and / or which do not or rarely incur costs resulting from partial execution may be favoured compared to other execution venues.

3) *Do respondents agree with CESR's views on the use of a single execution venue?*

We generally agree with CESR's view. In addition, we would like to note the following:

Para 30 of the consultation paper could be read in a way implying that investment firms are not only required to differentiate by client category as set out in the MiFID (retail clients / professional clients) but also by different types of client (e.g. clients for whom speed is paramount). We would like to stress that we do not share this view. The best execution obligation does not include a policy individualisation. Rather, the average customer is taken as a basis.

Of course, the specificities of certain types of clients (e.g. hedge funds) may be subject of a particular customised policy. However, this is not a “must”. We are convinced that the market will come up with proper solutions in case there is a demand for such a model.

4) *Do respondents agree with CESR's views on the degree of differentiation of the (execution) policy?*

We agree with CESR's view.

With regard to the obligation to differentiate between types of clients, please see above (question 3).

5) *Do respondents agree that the 'appropriate' level of information disclosure for professional clients is at the discretion of investment firms, subject to the duty on firms to respond to reasonable and proportionate requests? On the basis of this duty, should firms be required to provide more information to clients, in particular professional clients, than is required to be provided under Article 46(2) of Level 2?*

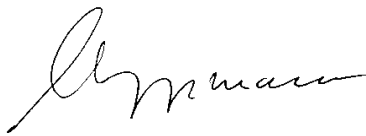
We agree with CESR's view that the 'appropriate' level of information disclosure for professional clients is at the discretion of investment firms, subject to the duty on firms to respond to reasonable and proportionate requests.

However, we do not see any obligation of investment firms to obligatory provide professional clients with the information set out under Article 46(2) of Level 2. To an even lesser extent can firms be required to provide more information than is required under Article 46(2) of Level 2. Such an interpretation would contradict Recital 44, which states that less demanding information obligations should be applied with regard to professional clients.

6) *Do respondents agree with CESR on how "prior express consent" should be expressed? If not, how should this consent be manifested? How do firms plan to evidence such consent?*

Basically, we agree with CESR's interpretation that "prior express consent" should be actually expressed by clients. Yet, we suggest to further interpret what is meant by "actually expressed by the client" due to differences in this respect in national civil laws.

With best regards,

A handwritten signature in black ink, appearing to read 'Schoppmann'.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Hemetsberger'.

Walburga Hemetsberger
EAPB