



Via E-Mail

Committee of European
Securities Regulators (CESR)
Mr Fabrice Demarigny

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**CESR's Draft Technical Advice on Possible Implementing Measures of the
Directive 2004/39/EC on Markets in Financial Instruments
i.e.: Best Execution
Ref.: CESR/05-164**

Dear Mr Demarigny,
dear Sirs,

The Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR) / Federal Association of German Cooperative Banks welcomes the opportunity to submit its comments on the latest CESR Consultation Paper.

The BVR represents the interests of approximately 1,330 cooperative banks which are, almost exclusively, local players in Germany. Together with specialised institutes (cooperative central banks, UCITS, building society, mortgage banks, insurance company) also internationally-active, these banks form a Cooperative Financial Services Network (genossenschaftlicher FinanzVerbund). The latter, specialised institutes are also represented by the BVR. In terms of client deposits, the cooperative banks hold a market share of almost 20% in Germany.

The BVR has taken an active role in preparing the comments of the European Association of Co-operative Banks and the Zentraler Kreditausschuss on the CESR draft. Concerning the issue of best execution, we would like to highlight the following aspects which, from our members' point of view, are of particular importance:

We see CESR's draft on selecting intermediaries / execution venues and on the investment firms' monitoring obligations associated with this (cf. particularly item 23 of the explanatory text and question 56) as a cause for concern:

- In their present form, the advice and the explanations concerning intermediaries fail to reflect the widespread division of labour which is one of the hallmarks of today's cooperation between investment firms when it comes to order execution; said cooperation is subject to corresponding outsourcing rules and regulations. Outsourcing is in the client's own best interest since it allows order bundling and quality assurance during order execution. Furthermore, outsourcing is a *conditio sine qua non* for the large number of small and medium-sized investment firms. Without outsourcing these SMEs could not offer or, moreover, continue to offer investment services at competitive terms. Hence, we feel a compelling need for safeguards so that outsourcers will remain capable of pursuing their policy of a division of labour on the basis of existing outsourcing rules and regulations when it comes to order execution. This affects, for instance, the preparation of the execution policy. Notably the task of monitoring the execution venues that have been selected needs to remain the reserve of the insourcer. We therefore propose an amendment to **Box 1** by adding the **following new item 3**:

"By way of derogation from paragraph 1 and 2, Member States shall allow investment firms to meet their obligations under Articles 21 and 22 (1) of the Directive also on the basis of the applicable outsourcing rules and regulations."

- When it comes to the question of selecting the service provider (intermediary, insourcer) there shall and must not be an isolated consideration of order execution. Rather, it needs to be taken into account that the service provider will regularly also be active for and on behalf of the investment firms in further areas (e.g. clearing and settlement, custody). This is also in the client's best interest since one-stop-shopping / a complete package allows to generate cost advantages allowing a more favourable offer to the clients.

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- We see a compelling need for allowing investment firms to confine their selection to **one** intermediary, insourcer or execution venue. Already given the costs, such a kind of restriction to one of the foregoing service providers/execution venues will often be necessary. Furthermore, – as has been pointed out above – it allows to realise cost advantages. Therefore, this policy has become a widespread standard market practice nowadays.

Without the possibility of meeting the requirements under Art. 21 MiFID within the framework of existing structures / standard market practices and in the event of disproportional requirements, we have strong concerns over a negative impact on competition which the forthcoming provisions may have. This might create a dangerous scenario where global players may try or, moreover, may themselves feel compelled to force investment firms into having their client orders executed via them through cross-subsidised, more favourable offers. In the end, there would be an oligopoly or even monopolistic structure. This would come at the expense of clients because it would lead to clearly higher prices in securities business. Given the underlying goal behind MiFID's Art. 21 which seeks to promote competition instead of curbing it, this would be a contradiction in terms.

When finalising its advice concerning best execution, we therefore urge CESR to maintain neutrality with regard to existing business models and to always keep a sense of proportion in mind. We are convinced that a careful consideration of our comments will facilitate a successful outcome of this difficult balancing act. We should like to additionally refer to the comments of the European Association of Co-operative Banks and the Zentraler Kreditausschuss.

For further information please feel free to contact the signatory on the right (email: lassen@bvr.de, telephone: +49 30 2021 2312).

Yours sincerely,
BUNDESVERBAND DER DEUTSCHEN
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by proxy



(Lehnhoff)



(Claßen)