

31st May 2010

CESR Technical Advice to the European Commission in the Context of the MiFID Review

Investor Protection and Intermediaries

NYSE Euronext responses

Introductory comments

Financial Intermediaries are responsible for providing a best execution policy, abiding by it and showing proof that it was abided by when executing client orders. We are therefore in favour of imposing the public dissemination of execution quality measurements to financial intermediaries as well as execution venues. We are also in favour of imposing that intermediaries provide to their clients the unbundled cost (i.e. segregating broker from execution venue fees) relating to execution, including, if applicable, any rebate or payment for order flow that the execution venue may offer to the financial intermediary.

Part2: Execution quality data (Art44(5) of the MiFID Level 2 Directive)
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13. Do you agree that to enable firms to make effective decisions about venue selection it is necessary, as a minimum, to have available data about prices, costs, volumes, likelihood of execution and speed across all trading venues?

Yes, we agree that prices, costs, volumes, likelihood of execution and speed across all trading venues should be made available to enable firms to make effective decisions about venue selection.

We feel that strict parameters should be set in order to ensure that all trading venues produce this data in a uniform way. A specific working group should be set up in order to define exactly which performance measures should be used. We also feel that these requirements, if adopted, must be imposed on all trading venues regardless of their status in order to maintain a level playing field for the benefit of the end investor.

We also would like to add that financial intermediaries themselves should also produce data to reflect the quality of their execution policy by making their execution data publicly available. The execution venues should make this data available for financial intermediaries in order for them to be able to implement their execution policy according to its terms, but these financial intermediaries also need to be able to produce quality data to their clients in order for investors to be in a position to make educated choices about who they want to entrust with their execution needs.

Just as execution venues have a responsibility towards their members to offer quality services and data to prove it, financial intermediaries have a responsibility towards their clients to offer quality services and data to prove it.

14. How frequently do investment firms need data on execution quality: monthly, quarterly, annually?

We believe that monthly reporting would be the most appropriate, as market conditions evolve at a very fast pace. Financial intermediaries need to have all the necessary data available in order to amend their execution policy dynamically, thus ensuring they are offering the best possible execution to their clients. For financial intermediaries we also feel that monthly reporting should be made available to their clients.

15. Do you believe that investment firms have adequate information on the basis of which to make decisions about venue selection for shares?

Currently we feel that there is very little information available to investment firms. Not only is the information scarce, but we also feel that its quality is not good due to the lack of objective measurement criteria. For example, the speed of execution measurement methodology needs to be clearly defined from a technical point of view in order to ensure that all execution venues are being assessed in the same way using the same objective criteria.

16. Do you believe investment firms have adequate information on the basis of which to make decisions about venue selection for classes of financial instruments other than shares?

We strongly support the idea of extending a rule that would require that execution venues and financial intermediaries produce information on their performance for liquid shares be extended to all assets admitted to trading on a Regulated Market, Systematic Internaliser, MTF, crossing network or any other execution venue. We see absolutely no reason why these measurements should not also apply to less liquid stocks and other classes of instruments such as Bonds, ETFs, warrants and certificates, Structured Products more generally, rights, corporate warrants, ETCs and ETNs.

Whether there is a choice of execution venue or not for these products, investors should be able to judge the quality of the execution they can expect when entering the trade and the expected impact when exiting the trade. In fact, the speed of execution measurements may be less important for these types of instruments and for less liquid shares, however effective and realised spreads become even more important on a less liquid asset as it will have a stronger impact on the cost of execution than on a more liquid asset with tighter bid-offer spreads.

17. Do you agree with CESR's proposal that execution venues should produce regular information on their performance against definitions of various aspects of execution quality in relation to shares? If not, then why not?

Yes, we agree that execution venues should produce regular performance information against definitions of various aspects of execution quality as outlined in paragraph 120 of the consultation paper. We would also like these same metrics to be used by financial intermediaries for their execution quality measurements as the best execution burden lies with them. All key aspects of execution quality are covered by the proposed metrics and will offer the adequate tools to investment firms in order to abide by Article 44(5)-3- of the MiFID Level 2 Directive.

18. Do you have any comments on the following specifics of CESR's proposal:

- ***imposing the obligation to produce reports on regulated markets, MTFs and systematic internalisers;***
- ***restricting the coverage of the obligation to liquid shares;***
- ***the execution quality metrics;***
- ***the requirement to produce the reports on a quarterly basis?***



As stated before, we would also like to see financial intermediaries included in the scope of this proposal, but agree that at minimum Regulated markets, MTFs and systematic Internalisers should be included in the scope of this proposal. We also see no reason to exclude crossing networks or any other execution venue as investors should always be able to assess the execution quality regardless of the execution venue.

We do not agree with restricting this obligation to liquid shares only as stated in question 16.

Regarding the frequency of reporting, we do not agree with the proposal of reporting on a quarterly basis and would favour a monthly reporting rule.

All reports produced should be accessible to all investors and therefore should be made public.

19. Do you have any information on the likely costs of an obligation on execution venues to provide regular information on execution quality relating to shares? Where possible please provide quantitative information on one-off and ongoing costs.

We expect that the likely costs of an obligation to provide regular information on execution quality in Europe would be similar to those amounts mentioned in paragraph 116 of the consultation paper.

One off costs for setting up the service could be significant depending on the definition of the measurements that will be adopted by the regulation, without more technical detail it is not possible to propose an estimate at this time.

However we feel that the benefits to investors greatly outweigh the costs incurred. The market fragmentation which has been the result of the MiFID directive, while positive in many aspects for the evolution of financial markets, has to be protected through transparency and CESR's proposal to include the compulsory reporting of execution quality measurements is a very good step towards achieving the goals set out in the best execution rule of the Directive.

20. Do you agree with CESR that now is not the time to make a proposal for execution venues to produce data on execution quality for classes of financial instruments other than shares? If not, why not?

As outlined in question 16, we agree with CESR that now is the time to include financial instruments other than shares within the scope of this proposal. We feel that it is absolutely necessary to include all instruments admitted to trading on a regulated market or other trading venue. We see no hurdles to achieve this. If an execution venue or financial intermediary has developed to the proposal in order to report execution quality measurements for shares, this capability could easily be extended to include other classes of financial instruments such as those stated in Question 10.