

By e-mail

CESR
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Secretary General

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CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments (Second Consultation Paper – March 2005/05-164)

Realkreditrådet (The Association of Danish Mortgage Banks) has taken a closer look at CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments (Second Consultation Paper – March 2005) and would like to put forward its comments seen from the point of view of the Danish mortgage banks.

Best execution (Article 19(1) and 21)

Using only one execution venue

Item 55 discusses whether a firm could satisfy the requirements of Article 21 if it only accesses one execution venue.

The use of only one execution venue ought to suffice when financial instruments are listed on one venue only, just as there may well be other situations that could also have the effect that the use of one execution venue would be sufficient.

Realkreditrådet therefore finds it important that no demands are made that require the use of more than one venue.

Circumstances under which changes to a firm's execution arrangements may be appropriate

In Box 3, the subparagraphs i - iii) contain proposals for the specific circumstances under which an investment firm must review its execution policy and arrangements. In the event, however, that there has been no concrete need to review the execution policy and arrangements, subparagraph iv) determines that an annual review must be made in all circumstances. We believe that the costs involved in a compulsory annual review will not match the expected outcome of the review.

Information on the percentage of a firm's orders that have been directed to each venue

Items 105 to 110 contain a renewed discussion of whether an investment firm should be required to provide clients and potential clients with information on the percentage of the firm's orders that have been directed to each venue.

Realkreditrådet wishes to state that it seems to be difficult to understand what benefit the investor would have from being informed of the percentile distribution of trading on each individual venue.

Disclosure about the investment firm's error correction policy, error rates and client order handling

Item 115 initiates a discussion of the proposal contained in item 113 on the disclosure about the investment firm's error correction policy, error rates and client order handling.

As mentioned previously, this is a significant change compared with today when clients are informed at the end of a complaint procedure that they may complain to the Danish Mortgage Credit Appeal Board (Realkreditankenævnet).

It is the opinion of Realkreditrådet that as far as mortgage banks are concerned, the handling of complaints is already sufficiently regulated. In Denmark there are e.g. specially approved appeal boards within different business areas. The Danish Minister for Economic and Business Affairs has approved the Realkreditankenævnet, and its activities are governed by the Danish consumer complaints legislation. The approval ensures that the Board complies with principles of independence, openness, contradiction, effectiveness, legality, freedom and representation. A Supreme Court judge chairs the Board. The Board may hear complaints regarding any legal issue in the relationship between the client and the mortgage bank.

Realkreditankenævnet publishes its decisions, and therefore clients have access to previously made complaints and their handling.

On this background, it is the opinion of Realkreditrådet that statistics showing previous errors would not be useful to the clients, and consequently firms should not be subject to an obligation to inform clients of their "error correction policy", "error rates" and "client order handling policy". Rather, Realkreditrådet suggests that it would be sufficient for the Danish mortgage banks to evaluate their order execution policies according to the MIFID.

Notifying clients of any material change to the firm's execution arrangements or execution policy

Item 121 suggests that an investment firm shall notify clients of any material changes to the firm's execution arrangements and execution policy.

In situations where an investment firm trade with their clients on a regular basis, it would be both relevant and natural for them to notify clients of any material changes to the firm's execution arrangements or execution policy.

However, in situations that involve long-standing client relationships where trading is rare and where periods of several years may elapse between transactions, it would not be relevant to notify the clients every time changes are made to the firm's execution arrangements and execution policy. In these situations, it should be possible to avoid sending out a general notification each time a change is made, but when the client wants to carry out a transaction, the firm shall inform the client of the execution arrangements and execution policy in force at

the time in question, if the arrangements and the policy have been changed since the previous transaction for the client.

Alternatively, it should be possible at convenient intervals to inform clients about changes in the execution policy.

Voice telephone communications regarding execution policies requiring the prior express consent of the retail client or potential retail client

Question 126, letter a, asks: "How might an investment firm gain the necessary consents required under Article 21(3) of the directive as part of a voice telephone communication.

The reason for choosing to carry out a transaction by telephone communication is the desire to conclude the transaction quickly. It is a matter of market prices that may change and therefore, seen from the client's position, it is desirable to conclude the transaction here and now. Another factor that may determine the demand for rapid transactions is that there may be sharp deadlines for when the proceeds from a transaction need to be made available. This is often the case in connection with the taking-out and prepayment of mortgage loans.

It is difficult to see the purpose of legislation that prevents firms from organising their business in such a way that their clients' interests are served in the best possible way. Therefore the starting point must be that it should be possible to obtain the required consent from the client as part of a voice telephone communication. In reply to question 126, letter a, we therefore suggest that the required consent may be obtained from the client during the voice telephone conversation and that the consent is subsequently confirmed in writing towards the client by letter or other durable medium.

Appropriate information that investment firms must provide to clients and potential clients regarding their order execution policy

In relation to the proposals in Box 4, we wish to point out that we consider it important that no rules are agreed that would ruin the possibility of using the Internet as a means of trading. This should be seen against the backdrop that clients are to an increasing extent becoming interested in using the Internet.

Best regards

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