



ASSOGESTIONI

associazione del risparmio gestito

Rome, 4 October 2004

Mr Fabrice Demarigny
Secretary General
CESR – The Committee of
European Securities Regulators

Dear Mr. Demarigny,

Re: CESR's Advice on Possible Implementing Measures of the Directive 2004/39/EC on Market in Financial Instruments (Ref.: CESR/04-261b)

In response to your invitation for observations and comments, this Association wishes firstly to thank you for the opportunity afforded to it.

Assogestioni is the Italian national association for the fund management industry and its members, who manage assets valued at over 900 billion euro, are directly affected by the regulations currently being discussed.

The following comments refer exclusively to the subject of best execution. For all other matters raised in the *draft Technical Advice*, please see the observations sent to you on 17 September last in response to the previous consultation phase.

This document necessarily contains indications of a general nature. As we are an association and represent numerous members, it is impossible for us to respond to the individual questions presented in the consultation draft, as they specifically address investment companies with a view to learning from their experience in the field of the order execution.



As we have already stated in our previous response to the consultation, we agree with the baselines expressed by the Committee in relation to inclusion of said duty as part of the general clause that obliges firms to act in clients' interests. In this sense it is certainly correct to include those who provide individual portfolio management and order receipt/transmission services, as well as trading intermediaries, among the parties bound by the obligation.

It is, however, fundamental that these brokerage agents are governed by rules appropriate to their operations, in order to make the provisions of Article 21 of directive 2004/39/CE fully effective.

We believe that this objective can be achieved by regulations founded on a single subjective distinction: rules that apply to brokers who have direct access to dealing centres and brokers who, for the execution of clients' orders at such centres, have access to those centres through other intermediaries.

In this sense, the planned implementation of Article 21 should be structured on two levels:

- demanding that parties directly accessing the trading platform scrupulously respect the factors indicated at Article 21 on the basis of the scale of importance derived from the criteria formulated by the CESR, and on another level:
- imposing upon brokers who operate on a client's behalf – but who do not access the dealing centres directly - a specific duty to adopt predefined and efficient procedures for the selection of trading intermediaries that guarantee, on a statistical basis, that the best conditions are obtained.

In relation to parties that directly access the dealing centres, we consider that Article 21 of the Directive already provides a comprehensive set of factors for assessing best execution, and that the CESR has correctly identified the need to provide a "scale of importance" to form the basis of an assessment made directly by the provider of the investment service.

With regard on the other hand to brokers who do not have direct access to the places of execution, the best execution obligation should be founded on items of assessment that are capable of appraising the processes by which orders are processed and entrusted to other brokers for execution. In this respect the implementing measures should regulate the following aspects:

- Order execution processes.
The CESR's Technical Advice should provide that investment firms adopt specific internal procedures for the execution of orders, including



identification of the persons responsible for their supervision and implementation.

Such procedures must be capable of monitoring the various stages of the order, from its processing to its transmission to the trader.

- Trader selection criteria.
Periodic assessments of the work of the placing intermediaries used must be guaranteed on a continuous basis. The assessment parameters could be as follows: execution capability, quality of searches, and efficiency in settlement operations.
- Remuneration levels and group relations.
In each member state, recourse to soft commissions should be regulated in order to guarantee that each execution ordered on a client's behalf is in the client's exclusive interest.

Brokers who do not directly access the places of execution should be obliged to adopt specific procedures relating to entrusting the execution of orders to trading intermediaries tied by group relationships.

We remain available for any further clarification you may require.

With kindest regards.

The Director-General