



Milan, 16 January 2007
Prot. 29/07

CESR
11-13 Avenue de Friedland
75008 Paris
France

Dear Mr Demarigny,

Re: CESR's Consultation on Best Execution under the MiFID (07-050b)

ASSOSIM¹ is grateful for the opportunity to express the following comments on the above consultation and appreciates the work that CESR is carrying out to set the ground for convergent implementation and application of the Market in Financial Instruments Directive.

EXECUTION POLICIES AND ARRANGEMENTS

Contents of an execution policy

Q 1: Do respondents agree with CESR's views on:

- 1.1 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?*

Without prejudice to the right of investment firms to adapt the content of their respective execution policies to their specific business strategies, it might be useful if CESR could provide an "indicative list" of issues which firms might consider including in their policies.

Consistently with the language in A21(3)MiFID, there should be no requirement on firms to list in the execution policy the names of the venues where they execute client orders – for example, firms should be

¹ ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

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able to declare that orders on listed shares are to be executed on the relevant regulated market unless the size of the order would make it preferable to deal it on the block market. Naming execution venues could prove impossible for illiquid financial instruments and tailor made products. Still firms should be able to name these venues where they wish so.

Finally, it would be helpful if CESR could better clarify the demarking line of the execution policy as opposed to the execution arrangements and the execution approach.

- 1.2 *the execution policy being a distinct part of a firm's execution arrangements for firms covered by Article 21?*

Yes. As a matter of fact, the obligation on firms to provide appropriate information and obtain client consent is restricted to the execution policy (as opposed to the execution arrangements).

- 1.3 *the execution policy under Article 21 being a statement of the most important and/or relevant aspects of a firm's detailed execution arrangements?*

Yes

Factors and criteria

- Q2: *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?*

Implicit costs are obviously relevant for retail clients whenever the size of an order relative to the liquidity of the relevant financial instrument might (materially?) impact its market price. As a matter of fact we cannot exclude that a net worth individual might need to deal a block. In any such case, to the extent that total consideration is given priority to implicit costs, we risk to make the execution of the relevant order impossible, in that the price (total consideration) on the regulated market (where listed) will always beat the price on the block market.

Professional clients

- (§29) we oppose any attempt to introduce any presumption in favour of "total consideration" when assessing best execution for professional clients. It should be for each firm to draw its execution policy in line with the business model it chooses. Accordingly, professional clients should be able to select the firm which best fits their execution needs by comparing the different execution policies available on the market.

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- (§29) with respect to professional clients, we do not agree that costs merit the same relative importance as price. There might be circumstances in which higher costs are to be justified because of the specific care paid by the firm to work out a better deal for a client. In any such case a mere comparison “ex post” of the prices available on the market at the time of the execution of the order would not be able to justify the higher fee charged to the client in relation to the specific characteristic of the order. CESR’s proposed approach risks to underestimate the implicit costs of a transaction.

Possibility of a single execution venue or entity

- (§38) we do not agree with CESR interpretation whereby A2MiFID requires firms to name each of the venues that enable an intermediary to obtain the best possible result on a consistent basis (See our answer to question 1.1). For the purposes of this provision it should suffice to provide appropriate information about the type of venues (e.g. regulated markets, block markets or systematic internalisers) on which a given financial instrument could be traded having regard, for instance, to its liquidity, the type and size of the order, the characteristics of the client etc.

Q3: *Do respondents agree with CESR’s views on the use of a single execution venue?*

Yes. We do agree that for the vast majority of non listed, illiquid financial instruments as well as bespoke products it might be unusual to have more than one execution venue

We also share CESR analysis in §39 whereby a firm may well decide against including into its execution policy a venue because of the costs related to a direct access (“*which might outweigh any price improvement an alternative venue might offer*”). In fact, firms should consider the possibility of transmitting an order to a relevant broker for execution on that venue. Still, in this case the firm’s compliance with the relevant requirement should be assessed against the provisions applying to RTO firms, rather than to firms which execute clients’ orders.

Consistently with the above, firms need to take account of execution costs when selecting venues for inclusion in the execution policy (See CESR’s analysis in §32).

Differentiation of the policy

Q4: *Do respondents agree with CESR’s views on the degree of differentiation of the (execution) policy?*

We understand that MiFID allows firms to create a number of execution policies to meet their respective customers’ needs relating to different financial instruments, types/size of orders and/or market structures. Accordingly, firms should provide appropriate information on their policies to allow investors to make informed decisions as to the firm and the specific execution policy to use.

DISCLOSURE TO CLIENTS

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Q5.1: *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?*

Yes.

Q5.2: *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?*

No. Professional clients should be able by definition to take appropriate investment decisions. They should then be able to identify their informational needs.

PRIOR CONSENT AND EXPRESS CONSENT

Q6: *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?*

We would highly appreciate an effort from CESR to identify a transitional regime to deal with repapering issues related to acquisition of (prior express) consent from exiting clients.

RELATIONSHIPS BETWEEN FIRMS IN CHAINS OF EXECUTION

Q7: *Do respondents agree with CESR’s analysis of the responsibilities of investment firms involved in a chain of execution?*

CESR should clarify that best execution responsibilities towards the final customer in an execution chain are retained solely by the firm which owes the contractual or agency obligation to that client.

REVIEW AND MONITORING

(§79) We do not agree that the quality of the results that an intermediary has delivered needs to be assessed against *“the results that were possible”*. The directive makes it clear that the obligation on the intermediary is to execute its clients’ orders in accordance with its execution policy. In turn, when designing the execution policy the firm needs to take all reasonable steps to obtain the best possible result. Still each firm should be able to draw its own execution venue by selecting the appropriate criteria that, consistently with its business model, will then determine the relative importance of the factors set out in A21(1)MiFID. As a matter of law, the firm is not at all required to prove that it has achieved the best possible results, but merely that it has executed its clients’ orders in line with its execution policy. As correctly stated in §92, *“firms are likely to assign [and should be left free to assign] different priorities to the Article 21(1) factors. As a result, the concept of the “best possible result” is likely to vary between firms depending on the prioritisation of the aforementioned factors”*.

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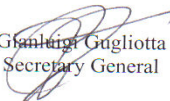
Requirement to monitor

(§86) We agree that a firm needs not to review each and every transaction and that sampling, as a possible reviewing method that a firm might adopt, could suffice for this purpose. We doubt however that a firm could be required to compare prices on different venues to assess the quality of its execution policy. In principle each of the venues included in an execution policy is meant to satisfy a different execution need – it would be unusual to have more than one execution venue for an order on a given financial instrument, of a given size and a given type of customers and for which the firm has assigned a given priority to the factors to be taken into consideration to determine the best possible result.

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We remain at your disposal for any further clarification you should require.

Yours sincerely,


Gianluigi Gugliotta
Secretary General