

RESPONSE TO CESR'S PUBLIC CONSULTATION PAPER 07-050B:

"BEST EXECUTION UNDER MIFID"

Introduction

virt-x welcomes the opportunity to submit views in response to CESR's consultation on best execution. Best execution is an issue of very far-reaching importance: it is the core of investor protection. We would be pleased to expand on any of the comments where that would be helpful.

About virt-x

virt-x Exchange Limited, a part of the SWX Group, is a Recognised Investment Exchange supervised by the Financial Services Authority. virt-x is the home market for the Swiss Market Index securities and also offers direct, real-time access to trading in the constituents of all the major pan-European blue chip indices, facilitating sector and index trading. virt-x has an integrated trading, clearing and settlement model which simplifies the process of trading pan-European blue chips and provides scope for significant reduction in cross border transaction costs.

Question 1:

Do respondents agree with CESR's views on:

• 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?

We consider that an execution policy should also include:

- any differentiation of cost to the customer of using the selected execution venues
- any interest (or conflict of interest) which the firm may have in using selected venues
- a description of the process by which the firm's execution venues are chosen, together with an overview of the relevant assessment criteria.

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

Yes.

• 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.

Question 2:

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?

We agree that the distinction between direct/explicit and indirect/implicit costs is more relevant to institutional investors than for retail business. Calculation of a best net price benchmark, based on explicit costs, should therefore be appropriate for retail investors.

Question 3:

Do respondents agree with CESR's views on the use of a single execution venue?

Whilst we accept that the costs of accessing more than one venue directly may outweigh the price improvement on a trade-by-trade basis, we believe that CESR should set a time horizon over which firms should consider the potential price improvement for their clients from an alternative venue. An investment firm should certainly consider the advantages of indirect access and, if the firm decides against access, this should be documented and made available to clients on request. Where a firm justifies use of a single execution venue, we believe that the policy should be reviewed at least half-yearly to ensure that the investment firm does obtain the best possible result for the execution of its client orders.

Question 4:

Do respondents agree with CESR's views on the degree of differentiation of the (execution) policy?

We concur with CESR's views on the degree of differentiation of the execution policy.

Question 5:

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? 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?

We agree that the 'appropriate' level of information disclosure for professional clients should be at the discretion of investment firms. MiFID sets the standard data information disclosure and we believe that firms should not be required to provide information to clients, whether or not they are professional clients, beyond either the MIFID standard or, if wider, what the firm considers to be appropriate disclosure. The duty on firms to respond to reasonable and proportionate requests should be set in a commercial context. It should be for a firm to decide whether it wishes to accede to information requests more onerous than the MiFID standard - and, if so, on what terms; it is then for the client to decide whether it wishes to place its business with a firm which declines to provide its requested disclosure.

Question 6:

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 suggest that, if prior express consent is given orally by telephone or in person, the investment firm should be required to send the client the record of the conversation (except if the telephone conversation is tape recorded and the record is retained by the firm for a suitable time).

Question 7:

Do respondents agree with CESR's analysis of the responsibilities of investment firms involved in a chain of execution?

Although we agree with CESR's analysis of the responsibilities of investment firms involved in a chain of execution, we suggest that it will be cumbersome in practice to determine where responsibilities lie. An eligible counterparty's duty to ensure that any entities with which orders are placed have execution arrangements is likely to be problematic and it may be preferable to retain the responsibility for best execution within the eligible counterparty itself without additional requirements. We are concerned that the consequence of a chain of responsibilities could be undue administrative burdens for firms in the chain or alternatively a dilution of true responsibility and accountability.

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