

CESR
Mr Fabrice Demarigny
Secretary General

16th March 2007
H551 - mhj

Public Consultation – best execution under MiFID

The Association of Danish Mortgage Banks welcomes the opportunity to comment on CESR's Consultation Paper on best execution under MiFID.

General remarks

Danish mortgage banks exclusively offer loans funded through the issuance of bonds. Mortgage banks only issue bonds in connection with the conclusion of loan agreements with customers. Consequently the investment activities carried out by Danish mortgage banks are closely linked to the lending activities. The issues raised by the Association of Danish Mortgage Banks should be seen in the light of this special link between the investment activities and the lending activities.

The asset-liability management of Danish mortgage banks is regulated in accordance with the balance principle. In practice, the balance principle creates a cash flow match between the assets of a mortgage bank, in the form of mortgages, and the liabilities, in the form of issued bonds. Mortgage banks only issue bonds in connection with the conclusion of loan agreements with customers. In other words the price on the loan is directly interdependent with the price on the bonds (the underlying bonds) that are funding the loan and the mortgage bank is offering investment services to borrowers when concluding a loan agreement.

Specific remarks

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?***
- ***the execution policy being an distinct part of an firm's execution arrangements for firms covered by Article 21 ?***
- ***the execution policy under Article 21 being a statement of the most important and/or relevant aspects of a firm's detailed execution arrangements?***

The Association of Danish Mortgage Banks agrees that the execution policy is a distinct part of the execution arrangements and should state the more relevant aspects of the execution arrangements.

As concerns the main issues to be addressed in an execution policy par. 22, d) is not included in level 2, and should not be included in level 3. This would be a natural part of the execution policy and should be left for the discretion of the investment firm.

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.

Par. 27 states that investment firms that execute orders for retail clients should focus on costs and only under extraordinary circumstances could other factors be taken into consideration. As an example CESR mentions particularly large orders in illiquid shares. The Association of Danish Mortgage Banks would like to point out that products offered to retail clients could be structured in a way that make other factors important for best execution. Please see the description of the Danish mortgage bank system under general remarks. In order for clients with Danish mortgage banks to decide whether it here and now is attractive to take out or refinance a loan clients request prices on mortgage bonds at once. Furthermore it is paramount to borrowers to receive the loan proceeds at the right time. Consequently speed and delivery time are paramount to customers with Danish mortgage banks. To fulfil these requirements the market is structured in a way that Danish mortgage banks are dealing the underlying bond with the borrower on own account on a price fixed in the wholesale market. Structuring the market this way the best possible price will be achieved and at the same time request for speed and delivery time will be fulfilled.

As a supplement to par. 24 we find that it should be stated that investment firms are only obliged to carry out specific orders if the firm according to its business terms offers the specific product or order type.

Question 3: Do respondents agree with CESR’s views on the use of a single execution venue?

The Association of Danish Mortgage Banks would like to stress that using a single venue could be a matter of the structure of the product or specific market. Please see the description of the Danish mortgage bank system under general remarks. Danish mortgage banks are dealing on own account with clients (borrowers) funding the mortgage loans. The price however is fixed in the wholesale market with a minimum transaction size of EUR 3 million. Consequently the clients are given the best execution possible – preferably to placing the order in the market as a retail order.

Question 4: Do respondents agree with CESR’s views on the degree of differentiation of the (execution) policy?

The Association of Danish Mortgage Banks agrees with CESR’s views on 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 request? 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?

The Association of Danish Mortgage Banks does not find that this matter should be addressed on level 3. Customer information such as this should be a natural part of customer service and be left for the discretion of the investment firms.

Question 6: Do respondents agree with CESR on how “prior express consent”?

Basically requirements as to form are a matter of national contract law. Where no common European regulation exists these matters should be left for member states to decide.

Article 21 of level 2 does not contain any requirements as to form concerning the express consent. The Association of Danish Mortgage Banks finds that such requirements should be decided on level 2. This point of view is supported by the fact that Article 19 of level 2 (Use of financial instrument) explicitly mentions that the consent must be given by signature or equivalent alternative mechanism. This should indicate that requirements as to form are a level 2 and not a level 3 matter.

If supervisory convergence should comprise these matters it would be appropriate to make a distinction between different types of markets and clients. As described under general remarks the products offered by Danish Mortgage Banks have as a necessary prerequisite that orders are traded off market. The bond trade is an underlying trade forming part of the loan product as a whole and furthermore the off market trade is an integral part of the loan product. Asking for an express consent in writing i.e. would not only be meaningless and out of proportion to the importance of other information offered to clients but would also be outright misleading as on exchange trades are not offered as a part of a Danish mortgage loan.

Question 7: Do respondents agree with CESR’s analysis of the responsibilities of investment firms involved in a chain of execution?

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Question 8: What core information and/or other variables do respondents consider would be relevant to evaluating execution quality for the purpose of best execution?

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Yours sincerely

Merete Hjetting