

16 March 2007

CESR
11-13 avenue de Friedland
75008 Paris
France

Dear Sirs

Best Execution – Public Consultation

The IMA represents the UK-based investment management industry. Our members include independent fund managers, the investment arms of retail and investment banks and life insurers, and the managers of occupational pension schemes. They are responsible for the management of approaching £3 trillion of assets (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds such as pensions and life funds and a wide range of pooled investment vehicles.

The IMA is pleased to submit its comments on CESR's consultation on MiFID's best execution requirements. The answers to the questions posed in the consultation paper are attached in the Appendix.

While the IMA supports CESR's general comments on execution policies and arrangements, disclosure, chains of execution and review and monitoring, we are concerned that the requirement that portfolio managers will be subject to both Article 21, Level 1 and to Article 45, Level 2 puts a disproportionate administrative burden on our members. Not only will it require them to have two execution policies for the same financial instrument but will also require them to comply with two different regimes as to obtaining client consent and as to identifying entities which have execution arrangements that enable the investment firm to comply with its obligations under Article 45 when it places or transmits orders to that entity for execution. We would welcome further guidance on this issue.

65 Kingsway London WC2B 6TD
Tel: +44(0)20 7831 0898 Fax: +44(0)20 7831 9975

www.investmentuk.org

The IMA understands that CESR will issue an addendum to the current consultation once CESR has had a response from the EU Commission on the scope of the mandate on best execution. We therefore expect to submit further comments following publication. However we urge CESR not to go beyond the end of April 2007 for final publication (whether this is in the form of feedback or guidelines). We understand from the public hearing that this is the date at which CESR aims to conclude its work in this area. Our members now wish to have certainty as to the practical application of best execution, so that they can begin work in earnest.

In the meantime if you have any queries please do not hesitate to contact me.

Yours faithfully

Liz Rae
Senior Adviser – Investment Operations

Appendix

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 a distinct part of a 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 IMA believes that CESR has identified the main issues which should be addressed in a firm's execution policy. We do not think however that the list of execution venues should be an exhaustive one but should itemise those venues on which a firm places significant reliance in executing client orders in order to achieve the best possible outcome.

The IMA agrees with the second and third bullet points.

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?

The IMA agrees with CESR that implicit costs are unlikely to be a significant factor for most retail client orders. The situation could arise however if an investment management firm has a particularly large private client business (possibly with several thousand clients) and wishes to buy or sell a stock across all accounts, that this order could actually be quite large relative to its average daily volume. In this case implicit costs would have to be taken into account as well as price and cost. It could also be the case that a fund manager may want to buy or sell a holding for a retail client in an illiquid stock. While not necessarily a large order, the manager would likely take into account implicit costs when transmitting the order for execution.

Generally the costs of executing retail client orders can be simply compared with the market price at the time the order was executed. It would be unreasonable and disproportionate for retail investment managers to install costly transaction cost analysis for the very few orders where implicit costs are important. A simple measure such as VWAP should be sufficient in those situations.

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

While believing that it would be unusual, the IMA agrees with CESR's view on the use of a single execution venue. The requirement to monitor and review the quality of execution provided should ensure that the firm is taking all reasonable steps to ensure the best possible result for client orders. The IMA, however, finds it curious that CESR uses as an example of the use of a single venue a portfolio manager or RTO who may direct all its order to an affiliate with its corporate group. Our

understanding is that one of the major reasons that the best execution requirements were introduced into MiFID was to curb such practices.

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

The IMA agrees with CESR's views on the degree of differentiation of the execution policy as between different types of instrument and as between client types or mandate.

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?

The IMA agrees that the appropriate level of information disclosure to professional clients should be at the discretion of the investment firm. Given that professional clients are likely to be more sophisticated than retail clients, firms may decide that it is appropriate to provide more information to those clients if requested by them. It should not however be a requirement but should be available if requested subject to the "reasonable and proportionate" test.

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?

The IMA has some concerns regarding the requirement for prior express consent, not least that it will have to be given by 31 October 2007. Given that the scope of the best execution requirements is not yet fixed and is unlikely to be before May, firms will then have a very short time in which to draw up a final execution policy and to gain clients' consent to it. This arises purely because of the application of Article 21 to our members for some of their trading arrangements, for instance it would apply to most members who manage fixed income portfolios. Some of our members will be faced with obtaining consents from tens of thousands of clients, whereas the expectation had been that this would not be required as our members would fall under Article 45. These consents are seen as adding no value for portfolio management clients, as they will have no impact on the way in which portfolios are managed. The execution policy, by contrast, could change the way firms approach the execution of their business and therefore is seen as having potential value.

The IMA would therefore urge CESR to give firms as much flexibility as possible as to how they gain prior express consent from their clients and would endorse the various options described. Appropriate record keeping should suffice in evidencing such consent.

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

The IMA agrees with CESR's useful analysis of the responsibilities of investment firms in the chain of execution. Our members understand that their responsibilities in the chain of execution can vary from placing total reliance on an intermediary to provide best execution to very low reliance where managers take responsibility for most aspects of the trade.

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

In order to assess execution quality it will be necessary that firms have access to high quality post-trade data. The implementation of MiFID, however, may well lead to the fragmentation of post-trade data and thus cast doubt on the integrity of the data which a firm uses. It is therefore important that some form of data consolidation is effected.

Regarding the core information which would be relevant to evaluating execution quality, volumes and prices available throughout the trading day are the most relevant.

**Call for Evidence
Execution Quality:**

We would need more time to gather the information sought by CESR and so will perforce rely on the service providers to report back to CESR.

Data retention implications for demonstrating compliance with execution policy:

We are very supportive of the work that CESR has done in the area of data consolidation. However, it may be premature for CESR to be making this call for evidence, with MiFID still some time away from coming into effect.

We note that the reference made to SEC rule 11 Ac1-5 in paragraph 93 refers to equity markets. In general, equity markets present fewer problems for data analysis, because of the high degree of transparency in the markets. Traditionally fund managers have relied on their brokers not only to provide best execution in equity markets, but also to retain any necessary market data. However future arrangements in the equity markets are unclear, for example as to whether there will be much take-up in respect of systematic internalisation or whether the business in this area will be handled through MTFs or Regulated Markets.

In markets in which there is less transparency, CESR will anyway have to await the outcome of the Commission's Article 65 review. Although there are developments in fixed income, such as the ICMA proposal for a pilot to test the effect of some post-trade transparency, the impact on data retention cannot be assessed yet.