

**INTESA SANPAOLO RESPONSE TO
CESR CONSULTATION ON
BEST EXECUTION UNDER MiFID
CESR/07 – 050b**

GENERAL COMMENTS

1. The Intesa Sanpaolo Group, created as from 1 January 2007 as a result of the merger of the Intesa Group and the Sanpaolo Group, is the largest banking group in Italy and one of the major players in the European market.
2. Intesa Sanpaolo shares CESR's main aim to promote supervisory convergence in respect of best execution, providing competent authorities with guidance in the interpretation and application of these rules.
3. Best execution is one of the core rules of MiFID, contributing to foster both market efficiency and investor protection, and its regime will be crucial for all investment firms. We therefore welcome CESR's intention to conduct additional work in this field should further issues arise, as well as to consult the industry in relation to the scope of application of the best execution requirements, once it has received the response from the European Commission.
4. The Intesa Sanpaolo Group appreciates the transparent process followed by CESR to finalise its Level 3 work to ensure a consistent and coherent interpretation of MiFID and would like to submit the following comments and responses.

A. EXECUTION POLICIES AND ARRANGEMENTS

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?*

5. Intesa Sanpaolo welcomes the views expressed by CESR insofar as they provide firms with greater clarity in relation to most of the issues relating to the concept of “best execution”.
6. As to firms executing client orders, however, Intesa Sanpaolo partially agrees with the issues identified by CESR to be addressed in an (execution) policy. From our point of view, in fact, the description of the investment firm’s execution approach for carrying out order for execution, set out under point a) of paragraph 22, should be rather inserted in the execution arrangements. In fact, we believe that the execution approach can be considered as the ensemble of the procedures and means implemented by the firm in order to obtain the best possible result and should be therefore included at an upper level, i.e. in the arrangements.
7. In turn, the (execution) policy should contain a synthesis of the key decisions taken at organizational level by the firm in respect to best execution obligations, which have correctly been identified by CESR under points b), c) and d) of paragraph 22. No other major aspects or issues should ordinarily be included in an (execution) policy besides these, since they provide investors with an exhaustive set of clear and specific information on the investment firm’s execution methods, allowing him/her to make an informed decision on the different investment options available on the marketplace.
8. In relation to investment firms regulated by Article 21, we therefore believe that the execution policy is a distinct part of a firm's execution arrangements, the former being a statement of the most important and/or relevant aspects of the latter.

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?

9. Intesa Sanpaolo believes that in relation to retail clients there are no other implicit costs that may be identified for the purpose of reducing the importance of the Level 1 Article 21(1) factors.
10. Furthermore, as to the applicability of the concept of "total consideration" to professional clients, it should be emphasized that, in most cases, the "price" of the financial instruments - rather than the "total consideration" resulting from price and costs - is the most important driver for professional clients (e.g. settlement transaction costs usually do not influence the decision of professional clients as to whether or not to invest).
11. However, it should be emphasized, that in many other cases different factors have to be taken into account by the investment firm in order to provide professional clients with the best possible result. For instance, the liquidity of the instrument and the speed of execution of the order are often key elements. Furthermore, for basket trading operators, the possibility to execute a cumulative order is also a factor.
12. Intesa Sanpaolo also shares CESR's view as to the different factors firms should take into account when (i) selecting a venue to be inserted in the execution policy and (ii) choosing a venue – amongst those listed in its execution policy - to carry out a specific transaction. It should nevertheless be stated in more clear terms that despite the reference to the "total consideration" test for the execution of retail client orders in paragraph 33, paragraph 34 generally refers to clients, therefore including also professional clients.

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

13. Yes.

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

14. Yes. Intesa Sanpaolo considers that the execution policy should be sufficiently detailed and differentiated so as to allow clients to make a properly

informed decision in relation to the execution services provided by the investment firm.

B. DISCLOSURE

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?

15. Intesa Sanpaolo agrees with CESR that it should be entirely left to investment firms to determine in which circumstances the level of information to be disclosed to professional clients may be considered as “appropriate”.

16. Moreover, pursuant to Recital 44 of Level 2 Directive, firms are required to provide professional clients with additional information whenever reasonable and proportionate requests are presented. However, in our view, this should not be interpreted so as to place upon firms the duty to provide professional clients with more information than is required under Article 46(2) of Level 2 Directive, since it would be against the spirit and the wording of MiFID, in particular:

i) Against Article 46(2) of Level 2 Directive, which specifically deals with the information to be provided to retail clients in relation to the execution policy - which cannot therefore be interpreted by way of analogy so as to ground its applicability also to professional clients; and, most importantly

ii) Against Recital 44 of Level 2 Directive, which states in clear terms that less stringent specific information requirements apply to professional clients than to retail ones.

C. CONSENT

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?

17. Intesa Sanpaolo agrees with CESR as regards the ways in which the “prior express consent” could in principle be provided by the client in order to enable the firm to proceed with the execution of the order. However, it should be also made clear that the “prior express consent” could be also provided through electronic mail.

D. CHAINS OF EXECUTION

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

18. Yes, Intesa Sanpaolo agrees with the analysis carried out by CESR in relation to the application of best execution requirements to investment firms involved in a chain of execution. In particular, we share the view that best execution obligations should reflect the particular function typically performed by the firm along the chain, i.e. the specific service provided, whether execution of orders, portfolio management (without execution) or reception and transmission of orders. Likewise, we agree with the criteria identified by CESR as regards distribution of execution responsibilities amongst investment firms involved in a chain, whenever these overlap.
19. In addition, with specific regard to paragraph 72 of the consultation paper, Intesa Sanpaolo shares CESR's understanding - based upon Recital 75 of Level 2 - that portfolio managers and RTOs may rely to a large extent on the decisions the intermediary makes on behalf of its clients, provided that Article 21 best executions obligations are complied with by the intermediary.
20. However, according to CESR, portfolio managers and RTOs would not be relieved from all best execution obligations, since they are still subject to the requirements set out in Article 45 of Level 2 Directive. In that respect, we consider extremely important to make clear that portfolio managers and RTOs can nevertheless rely on the intermediary in relation to the general obligation to act in accordance with the best interest of their clients, provided that the intermediary executes orders in compliance with article 21.

E. REVIEW AND MONITORING

21. Intesa Sanpaolo welcomes the rationale followed by CESR in assessing and interpreting the reviewing and monitoring obligations which must be fulfilled by investment firms according to Article 21 Level 1 and Article 45 Level 2 respectively.
22. In particular, we share the view that the monitoring methodology should be left to the firm's discretion, as correctly underlined by CESR. However, in our view, "sampling" is the only possible way to assess and compare data in order to satisfy the monitoring requirement.
23. Similarly, we agree with the rationale followed by CESR to identify the different reviewing and monitoring obligations, depending on the role performed by firms in a chain of execution. However, it should be borne in mind that for portfolio managers, in some circumstances, it may be

particularly difficult to gather the relevant data to properly carry out the monitoring and reviewing exercise.

F. EXECUTION QUALITY DATA

G. OTHER ISSUES

We kindly ask CESR to postpone the calls for evidence in order to grant the industry more time to respond to such important issues.

For any further comments or questions, please contact:

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