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Dear Sir

CESR consultation on Best Execution

M&G has been looking after savers since 1931 and now has £17bn of retail funds under management and more than 750,000 investors. Since May 1999 M&G has been part of the Prudential Group and now has responsibility for the management of all of Prudential's assets in the UK and Europe. Total assets managed by M&G are thus some £155bn covering Institutional, Retail and Life and Pension clients. Of this some £64bn is in fixed income investments making M&G one of Europe's leading players in the fixed income market.

At the outset of this paper we would like to affirm our support of Level 3 of the Lamfalussy process and CESR's role in this. We welcome CESR publishing advice on this challenging aspect of the MiFID. We are however concerned that the position articulated therein seeks to apply all aspects of these requirements to Investment Managers and then illustrates how best ex is to apply in practice only in relation to Broker Dealers.

Level 3 of the Lamfalussy process should detail European regulators working in concert to ensure consistent transposition and implementation of Level 1 and 2 legislation. For Level 3 to succeed, such published advice needs to be clear and whilst this paper may provide clarity to the broker dealer community, it fails to do so for the Investment management industry.

By way of example, Level 1 Article 21 states that Member States shall require investment firms to provide appropriate information to their clients on their order execution policy and that Member States shall require investment firms to obtain the prior consent of their clients to that execution policy. It seems entirely appropriate that firms subject to Article 21 of Level 1 are required to receive client consent to their execution policies and that there should be a sufficient level of disclosure for consent to be valid. We question how this requirement would apply to Professional clients of Investment Managers as, in our view, Investment managers are chosen on their ability to deliver a portfolio which meets these clients' needs, rather than by their ability to execute decisions. We feel the paper lacks clarity in this respect.

Whilst potential conflicts of interest in the execution process exist, MiFID already provides for this, requiring these conflicts to be managed out. Investment Managers have commercial imperatives that encourage them to act in the best interests of their clients and therefore take all steps necessary to obtain the best possible results for them. This, in our view, aligns perfectly with the duties set out in Level 2 Article 45 but does not mean that the concept of Best Execution, as applied to Brokers Dealers under Level 1 Article 21, should be applied in exactly the same way to Investment Managers.

Accordingly, we would ask CESR in its communication with the Commission, to ask for clarity on the following:-

- i) whilst acknowledging that Investment Managers are part of the chain of execution, to confirm that they do **not** 'execute' orders;
- ii) whether the language in Article 21 of Level 1, which states "taking into account", precludes the addition of further factors to those specified in this article?

- iii) reaffirmation that Best execution is a policy-driven, best endeavours requirement, rather than an absolute, transaction-by-transaction obligation. In our view, the directive makes clear that a firm must be able to prove that its policy was followed and that the policy was monitored and reviewed and nothing more.

Our belief is that Article 45 of the Implementing Directive was drafted because Article 21 was ambiguous in its application to all "investment firms", given that the duties set out in this Article do not translate easily to the Investment Management industry. Increasingly, there are signs that the EU are trying to apply Article 21 to some activities of Investment Managers, whilst at the same time failing to explain how this is done. It would be helpful, therefore, if CESR could provide relevant advice in this regard.

We would be happy to discuss any of our issues with you. If you have any questions please do not hesitate to contact me.

Yours faithfully



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Appendix

Answers to specific questions and calls for evidence

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?

We agree in principle with CESR's comments we however note that an Investment Managers' policy for agreeing trades with brokers is normally distinct from their settlement procedures. We would not expect an "execution policy" to cover matters other than agreeing the trade with the broker dealer.

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

No comment because MAGIM has no retail clients

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

MAGIM expects to use a number of execution venues.

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

Paragraph 46 of CESR's document states that the level of differentiation in a firm's (execution) policy should be sufficient to enable the client to make a properly informed decision about whether to utilise the execution services offered by the firm. With this in mind, we would comment that Professional Clients of Investment managers are interested in performance and not the detail of an execution policy. If and when a client expressed interest, then data would be made available.

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?

Articles 21 and 45 stipulate that firms provide "appropriate" information to their clients. Accordingly, for Professional clients, we do not feel there is any need for prescription about what details they should receive. The MiFID's implementing directive identifies that these clients are capable of asking for what they want (in recitals 5 onward) and it would, therefore, seem "appropriate" that minimal detail needs to be provided unless the client asks for more. Accordingly we see no advantage in providing such clients with a list of counterparties (venues) that the Investment manager might use.

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?

Yes these proposals seem appropriate.

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

Whilst we agree with the analysis provided and that Investment Managers should ensure that the Broker Dealers they use execute properly, we still feel the paper fails to answer the key question, which is, do Investment Managers actually ever “execute”?

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?

The following bulleted items set out additional information /variables which we feel are relevant in evaluating execution quality for our clients:-

- An Investment management firm’s business model has an overarching principle to act in the best interest of its clients and take all steps necessary to obtain the best possible results for its clients and it is this key driver which enables an Investment manager to demonstrate and achieve best execution. At the core of our day to day activities there exists segregation of duties, such that one investment professional oversees the accounts on which another has “dealt”. These professionals are concerned with the overall result in the accounts they supervise and the data used to evaluate performance is their market knowledge, as confirmed (where relevant) by price feeds.
- There exists a commercial relationship aspect as to the when and with whom we transact, which is entirely consistent with our duty to obtain the best possible result for our clients. Maintaining strong relationships with our chosen network of broker/dealers is crucial in the generation of investment ideas and capital/liquidity provision to us as participants in the chain of execution.
- For transactions on dealer markets, the factors available to Investment Managers when “executing” are known or irrelevant when a deal is agreed, the only variable factor being price. In selecting venues we might consider speed and likelihood of settlement but these would rarely be issues if the liquidity is available. We would approach only those dealers who we thought held the stock and therefore this data is unlikely to be available, other than through previous transactions. In other words, if bank A bought stock Y and this bank has not sold any since that point in time, it would be logical to assume they still have Y available to sell. This scenario does not fit easily with CESR’s comments regarding the monitoring of execution quality, which assumes venue data will be available (clearly not the case in all markets). We feel the CESR paper should make comment to this effect. Paragraph 85 of this paper suggests comparison of transactions with similar transactions at the same venue, whilst at the same time acknowledging in paragraph 86 that “monitoring methodology is at the discretion of firms”. In our view this latter statement is less prescriptive and a more appropriate stance on this monitoring requirement. Firms should be given flexibility to use whatever approach is deemed appropriate in monitoring the effectiveness of their order execution arrangements and policy.

In this regard we would recommend that CESR reinforce the following points:-

1. that the review of an investment firms’ policy should be proportionate to the market in question e.g it is possible to do more in equities than in fixed income; in the case of the latter, these markets will not have market data available, making the application of your guidance difficult.
2. Sample testing is only one of many approaches that could be used to monitor effectiveness of order execution arrangements and policy.

SEC Rule 11Ac1-5

CESR refers to SEC Rule 11Ac1-5 . This rule applies to market centers and BROKER DEALERS NOT Investment Managers its summary states: “Under Rule 11Ac1-5, market centers that trade national market system securities will be required to make available to the public monthly electronic reports that include uniform statistical measures of execution quality. Under Rule 11Ac1-6, broker-dealers that route customer orders in equity and option securities will be required to make publicly available quarterly reports that, among other things, identify the venues to which customer

orders are routed for execution. In addition, broker-dealers will be required to disclose to customers, on request, the venues to which their individual orders were routed.”

CESR asks if this rule’s disclosure requirements would be useful. The requirement to disclose venue is already in place under the MiFID. The requirement to disclose the speed of order handling would be useful to Broker Dealers for evaluating Exchanges.

Paragraph 96 call for evidence on data retention.

MAGIM believes that MiFID requires retention only of sufficient evidence to show that a firm followed its policy and carried out the necessary monitoring and review of its policy. Its approach will be to continue its current practice. That is to retain: competing quotes compiled when passing orders to Dealers and market data assembled when monitoring or reviewing.