



Mouvement  
des Entreprises de France  
**MEDEF**

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**Mr. Fabrice Demarigny,  
Secretary General  
Committee of European Securities  
Regulators (CESR)  
11-13, avenue de Friedland  
75008 PARIS**

*Economic, financial and tax affairs department, /  
Legal affairs department*

Paris, October 4, 2004

Dear Sir,

MEDEF should like to present to you its comments regarding CESR consultation document 04/261b, relating to implementing measures for the Markets in Financial Instruments directive, with respect to the two most particularly sensitive questions for issuers, the rules for best execution of orders and the transparency rules.

The MIF directive, in article 21, requires investment companies to obtain, when executing orders, the best possible result for their clients by determining, as the factors of reference for evaluating this result, the price, cost, speed, likelihood of execution and settlement, size and nature of the order along with any other consideration relating to the execution of the order. CESR, noting the high level of interdependence of these factors and the diversity of client expectations, proposes general criteria for weighing these various factors according to the client type, the order type and the potential execution venues. CESR states that the investment company should be capable of demonstrating that venues it has selected make it possible to obtain, for a constant base, the best result.

MEDEF has observed that this analysis leads to the implementation of a decision matrix which, from a theoretical point of view, has the advantage of covering every conceivable situation but which seems difficult to put into practice. It may, on the contrary, prove counter-productive by excessively increasing the cost of transactions.

It would therefore seem indispensable in this regard to adopt the most pragmatic approach possible. To this end, MEDEF recommends according greater contractual freedom between the client and the financial intermediary so that together they may determine the execution policies that are most appropriate to the client's needs, in conjunction with the integration of a code of good conduct designed to encourage best practices in these contractual negotiations.

At the same time, transparency should be encouraged in order to offer clients the means that allow them to appreciate objectively the performance of the execution policies proposed to them by their financial intermediaries. To this end, it seems extremely important for everyone involved in the European financial sphere to have access to reliable and centralized information. CESR, with adapted extra resources, would be best suited to organize a benchmark data base of execution policies.

It might also be noted that benchmarking agencies for the execution of transactions already exist and that their role is likely to be reinforced in the new operating context of the European financial markets. They could thus provide an independent repository and offer a way of obtaining a finer analysis to any protagonist in need of such.

The directive also obliges investment companies to inform their clients about this order execution policy. From the point of view of MEDEF, the level of information proposed by CESR appears satisfactory, on the basis of an annual review, provided that no major event should call into question the policy concerned.

Lastly, in terms of post trade transparency, MEDEF would like to insist on the importance of having consolidated information as well as information about the leading market for a given security. To us, it does not seem conceivable that companies – whether in the position of issuer or investor – should be expected to collate for themselves all the disparate information around in order to know what movements have taken place for a given financial instrument. MEDEF considers that CESR would be the appropriate place for centralizing this information.

We would be more than happy to discuss these comments with you in detail.

Yours faithfully,

Director

Director

Agnès Lépinay

Joëlle Simon