



EFFAS THE EUROPEAN FEDERATION OF FINANCIAL ANALYSTS SOCIETIES

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via Email/Internet

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Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments CESR 05-164

Response by EFFAS European Federation of Financial Analysts Societies

Dear Mr Demarigny,

The European Federation of Financial Analysts Societies, EFFAS, is the European umbrella organisation of national analysts societies. It comprises 23 member societies representing more than 14,000 investment professionals in the areas of Equity and Bond Research, Asset and Portfolio Management, Investment Advice.

1. Lending to Retail clients

Question 2: Do market participants consider that investment firms have to obtain the necessary information about the retail client's investment objectives in addition to his financial situation?

Although this issue generally does not concern members of EFFAS because the professionals organised in its member organisations do not generally lend funds to their clients for investment transactions, we would like to express our opinion.

In reply to question 2, EFFAS thinks that an investment firm considering to lend funds to a retail client in the course of the latter's investment business, the firm should be obligated to enquire about the investment objectives of such a retail client, if it has not done so already in connection with the envisaged transaction. In any case, the investment firm must take the loan into account, determining the suitability of such a financed transaction.

However, we suggest in adding a point (c) following point (a) and (b)

(c) an investment firm organises a credit to facilitate the payment to the client for the papers already sold but not settled with the market.

Usually transactions are settled some days after they take place on the market. However sometimes clients need the money as soon as possible. In such cases the investment firm may organise a credit for the client, so he receives the money the day (or next day) the transaction is confirmed by the market, but not yet settled. It is safe both for the investment firm and for the client, because the settlement is guaranteed with the special fund managed by the

clearing house. In such a case no knowledge about the client's financial position is necessary – it is a routine and safe monetary credit to the client, not for the purpose of allowing him to carry out the transaction, but to fasten the money payment after the transaction.

2. Definition of investment advice – generic and specific advice

We would like to repeat our opinion expressed in the past on this issue:

EFFAS suggests not to restrict the category of investment advice under MiFiD to specific transactions in financial instruments and not to leave out generic advice, including financial planning and asset allocation services.

In our opinion, the definition of investment advice should also cover generic recommendations (recommendations of classes of instruments).

Financial planning and asset allocation should be covered by the definition of investment advice, since these activities could generate decisions as relevant or more than a specific recommendation to buy or sell a certain financial instrument.

Moreover, the implementation of recommendations related to financial planning or asset allocation eventually implies one or more specific transactions as a consequence of the advice on which classes of instruments to invest in.

3. Best execution

In the discussion CESR introduces the term “indirect execution” in order to apply the „best execution“ requirements to investment firms which receive and transmit orders or provide the service of portfolio management.

The MiFiD does not know this term, but rather defines quite clearly „execution“ as acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients. This definition must be read in conjunction with Annex I Section A in which the „execution“ of orders is listed as a separate category, besides “reception and transmission“ of orders and portfolio management. Therefore, CESR's approach is not covered by the MIFID. Neither the Commission nor CESR may alter the basic definitions and obligations tied to them.

Therefore, the approach should not be based on introducing a vague concept of indirect execution blurring the lines between services. In the normal set up of providing services related to receiving and transmitting orders or managing portfolios, the client has relationships to more than one service provider, i.e. the executing firm on the one hand and the order taker or portfolio manager on the other hand. In this triangle situation, the obligation of “best execution“ lies with the executing firm and should stay there. The executing firms have a structure and size to be able to „best“ execute an order.

Small introducing brokers and/or portfolio managers typically have not access to the information on all execution venues available. Furthermore, the determination of all factors might become so time consuming that their prime function could suffer. In addition, imposing the burden to determine the „best execution“ upon them would in many cases entail that the clients maintain accounts with several institutions (banks and/or brokers), a fact that might lead to complications, especially for retail clients.

It would create complications for the administration of their investments. If the administration of multiple accounts is delegated to the intermediary, it might perhaps reduce the direct transaction cost in some cases, but might increase the administration fees or commissions to the detriment of the client.

Conclusion: Intermediaries like introducing brokers and portfolio managers are not and should not be subject to the “best execution” requirement, unless the client specifically has imposed this burden upon the intermediary by contract. By statute, this obligation ought to remain with the account carrying and executing firm.

From the customer perspective, an executing firm is the first link in the chain of several executors (typically an undisclosed account carrying agent or full broker commissioning the transaction to another firm) and is responsible for assessing whether it may rely on the best execution policy of the next firm up the chain involved in the execution process, or whether choices must be made on its own level.

Intermediaries (receiving and transmitting orders as disclosed agents and portfolio managers) acting in the name and for the account of their clients should only be subject to a “best execution” obligation when and if their contract with the client says so, or when and if this obligation has been shifted (outsourced) by the executing firm to them. In the latter case, their obligation is not a primary one, but rather a secondary one derived from the executing firm. In all other cases, the intermediary must be able to rely on the best execution policy for the firm handling the execution of the order.

Yours sincerely,



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Chairman of EFFAS