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To
CESR
Mr. Fabrice Demarigny
Secretary General of CESR

C.C.
Hellenic Capital Market Commission
Mr. Alexios A. Pilavios
Chairman
and
Mrs. Eleftheria Apostolidou
Head of International Affairs

Athens, 16 March 2007
Ref: 2302

Response

BEST EXECUTION UNDER MIFID

CESR Public Consultation – Ref: CESR/07050b

1. The SEDYKA¹ welcomes the opportunity to commend on CESR's consultation on best execution under MiFID, as it strongly believes that the adoption of best execution requirements constitute a milestone for the achievement of the MiFID's goals concerning market efficiency and investors' protection.
2. In this context, we would like to point out that our participation in this consultation process refers mainly to the SEDYKA's intent to represent at a European level the interests of the Greek companies constituting the major factors in the area of reception and transmission of orders (RTO) within the Greek financial markets. Our participation is also based on our belief that firms providing RTO services play a pivotal role in the financial markets as they facilitate the concentration of transacting interests to the execution venues (i.e.

¹ SEDYKA is the association of the Greek companies engaging business exclusively in the sector of reception and transmission of orders in transferable securities and units in collective investment undertaking and of the provision of investment advice in relation to those financial instruments. It represents the interests of almost 175 companies having the legal form of societe anonyme with a compulsory initial share capital of 100.000€.

regulated markets, systematic internalisers etc), thus supporting in this way the markets liquidity and efficiency.

A. General comments

3. Although we strongly recognize the need for further regulatory convergence at a Community's level as a key component in achieving the European integration in the financial sector, we believe that the implementation efforts either at Level 2 or at Level 3 of the Lamfalussy process shall not lead to a reduction in competitiveness for market factors but, instead, shall enhance competition at this stage. In this regard, we are of the opinion that CESR should take seriously into account the danger of going beyond its competencies in terms of fostering supervisory convergence at Level 3 with regard to interpretation issues of MiFID's Level 1 and Level 2 provisions on "best execution".
4. In general terms, we agree that the issues of execution policy and arrangements, disclosure to clients, client consent relationship between firms in chain of execution, review and monitoring as well as execution quality data constitute key factors in interpreting and further analyzing the scope of obligations that the markets participants undertake in order to comply with the MiFID's Level 1 and Level 2 best execution provisions.
5. In this context, we state below our specific comments on CESR's paper on best execution in terms of our intent to contribute to CESR's efforts to achieve the needed supervisory convergence at Level 3 with regard to the implementation of best execution requirements.

B. Specific comments

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?*
6. SEDYKA agrees with CESR's approach concerning the execution policy which a firm has to follow in order to comply with its duties of achieving the best possible execution result in the interests of its clients.
 7. In further elaborating the execution policy concept, we are of the opinion that investment firms should undertake the obligation to provide appropriate information about their execution policy not only to their clients but also to the firms engaging in RTO business, with whom they cooperate. This position is based on the perception that information on the execution policy is of high importance not only in facilitating the business of those firms but also in enhancing investors'

protection and confidence with regard to the provision of the related services.

8. Furthermore, we support CESR's position that execution policy constitutes a part of the firm's execution arrangements. However, we consider that such a distinction between policies and arrangements has a practical utility mainly in cases where the firm uses more than one executing venues for execution purposes. For example, the need to distinguish between such policies and arrangements is not apparent in case where the firm acts only as a member of a regulated market. In this case, we are of the opinion that the stipulation by the firm-member of the execution arrangements in terms of price, costs etc, would suffice due to the fact that no particular complexity in terms of executing venues exists.

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. In terms of the general meaning of the term "implicit costs" it is rather difficult to stipulate in an exhaustive manner the cases subject to its content. To this end, it is also very difficult to consider the impact of the implicit costs in determining the best possible result concept as well as to adopt specific methods in order to measure the costs in question.
10. Implicit costs might be, for example, any kind of taxes, dues, stamp duties or royalties in favour of any third party involved in the execution of the order. Furthermore, within the scope of the mentioned costs may also fall any "indirect cost" (see *Giovannini Reports*) referring to back office (i.e. clearing, settlement, custodian etc) related costs.
11. The above examples show that it would be rather difficult to adopt a uniform rule in terms of stipulation and measurement of the costs concerned. Hence, we are of the opinion that the firm shall effect any implicit measurement methodology *ad hoc*, i.e. on a case by case basis, taking into account the particular nature of the implicit cost as well as the degree of the cost impact on the total consideration connected with the service in question.

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

12. It is apparent that MiFID creates a level playing field giving the chance to market factors to compete with each other under fair and transparent trading conditions. This approach inevitably enhances competition among them. In this context, competition in praxis may lead to a "Single Execution Venue or Entity" approach as pointed out in the CESR's consultation paper. Under the said approach, firms acquiring in the markets a prominent position in terms of achieving the best possible execution result, for example in terms of price, costs etc

relating to execution, will inevitably concentrate other firms' as well as their clients' relevant execution interests.

13. However, taking into consideration that market forces are led by a variety of different conditions and factors (e.g. different products, different services and market structuring) it should not be reasonable to refer to a "Single Execution Venue or Entity" approach in terms of specifying best execution obligations. This approach may result to misinterpretations; i.e. may be wrongfully interpreted as limiting the scope of the firms' obligations to review their execution policies and arrangements periodically, for example in case of material changes, as stipulated under Article 46 of Level 2.

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

14. As it is apparent from its consultation paper, CESR states a series of criteria for differentiation purposes of the execution venues concerned. In general terms, we agree with CESR views to specify the mentioned criteria and in this way to point out the degree of differentiation of the (execution) policy.
15. However, as the market conditions and relevant factors may change from time to time, it is obvious that the degree of differentiation and relevant criteria may vary accordingly. Hence, in terms of CESR's stipulations with regard to execution policy differentiation it should be taken into account that the referred criteria and degree of differentiation are of *indicative nature* and are stipulated only in terms of showing the impact of the execution policy effect on the clients' decision making process on the appropriate, as the case may be, execution service providing.

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 request? 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 Level2?

16. We are of the opinion that the "appropriate" level of information disclosure for professional clients should not be only at the firm's discretion but should also depend on the professional clients' needs and particular kind of execution service providing. Indicative criteria that may stipulate those needs may be the particular type of the financial instruments concerned (e.g. OTC derivatives, bonds etc), the market in which the client seeks its order to be executed (regulated market, OTC market etc) and the clients particular strategic and trading perspectives.
17. To this end, firms should not be required to provide in all cases more information to professional clients than is required to provide in case of retail clients, but should be required to examine the relevant disclosure requirements on a case by case basis.

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?

- 18.** The stated forms, referring to the client's consent expression under CESR consultation paper, definitely fall into the definition of “consent” or “acceptance” that many legal systems of EU member states adopt.
- 19.** However, considering that the forms by virtue of which prior consent is expressed may vary in accordance with the means used from time to time for such expression, it should be reasonable to underline that CESR's criteria are of an indicative nature only.
- 20.** Firms' plans to evidence such consent may not limit their rights of choice and, to this end, it should be reasonable to accept as valid evidence any form of signature of their clients either in writing or by the use of electronic means.

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

- 21.** We definitely agree. We find CESR's analysis very comprehensive and reasonable as it takes into account the different kinds of service providing in relation to the intended goal, which refers to the achievement of the best execution result in terms of any chain of execution.

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?

- 22.** We are of the opinion that information disclosure in terms of evaluating execution quality for the purposes of best execution should not refer to a specific set/kind of information data. Instead, we consider that such disclosure should reflect the information that the venue (regulated market, MTF, internaliser etc), executing the order concerned, is obliged to issue, provide, disseminate and/or consolidate in terms of the venue's relevant transparency obligations as stipulated at Level 1 and Level 2.
- 23.** In this context, we believe that the kind of core information that has to be available or consolidated etc may in all cases reflect the information disclosure of the executing venue concerned. Consequently, such information may vary, accordingly, in terms of the particular kind of venue and its relevant transparency obligations under the above Levels.

Best regards,

Mr. Spyros Bonatos
Chairman

Mr. H. Moraitis
General Secretary
