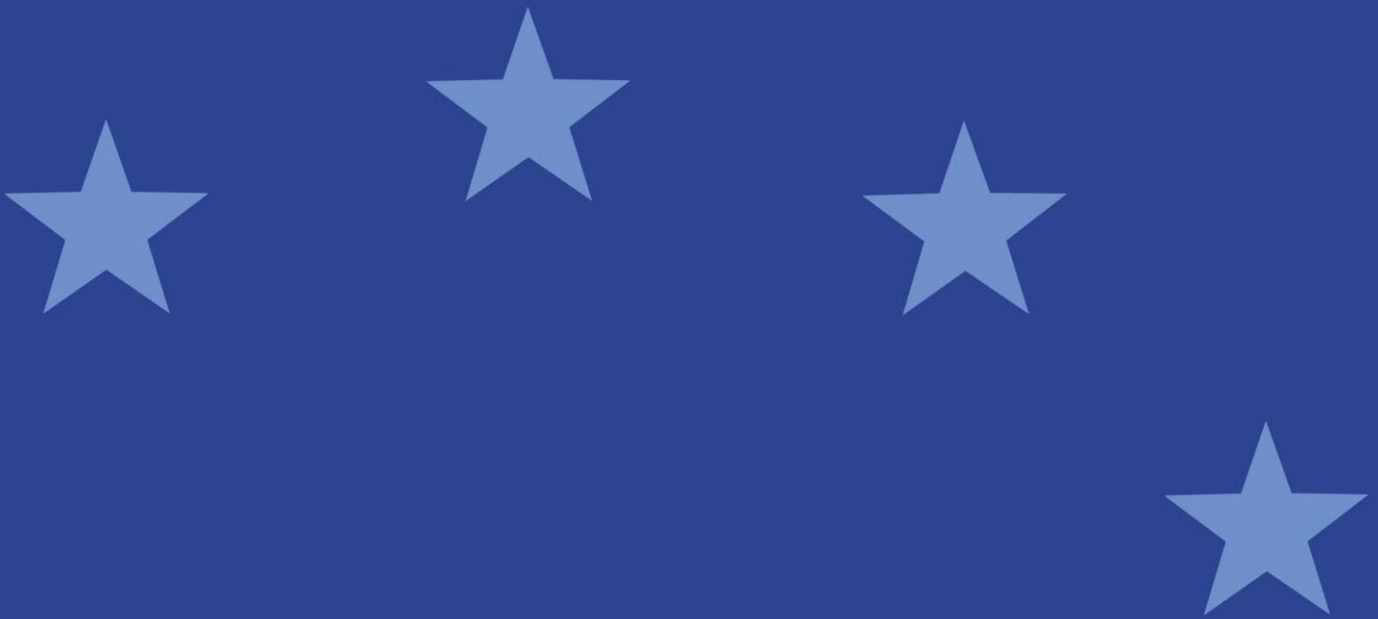




European Securities and  
Markets Authority

## **Follow-up Report to the Peer Review on Best Execution**



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## Acronyms used

MiFID – Directive on markets in financial instruments (Directive 2004/39/EC)

MiFID2/MiFIR - Directive on markets in financial instruments (Directive 2014/65/EU, repealing Directive 2004/39/EC) and the Regulation on markets in financial instruments (MiFIR, Regulation 600/2014)

NCA – National Competent Authorities

### **Table with the 15 NCAs involved in the follow-up assessment**

BG	Financial Supervision Commission	FSC
CY	Cyprus Securities and Exchanges Commission	CySEC
DK	Finanstilsynet	Finanstilsynet
EE	Estonian Financial Supervision Authority	EFSA
EL	Hellenic Capital Market Commission	HCMC
HU	Magyar Nemzeti Bank	MNB
LI	Finanzmarktaufsicht	FMA
LT	Lietuvos bankas	LB
LV	Financial and Capital Markets Commission	FCMC
MT	Malta Financial Services Authority	MFSA
PL	Komisja Nadzoru Finansowego	KNF
RO	Financial Supervisory Authority	FSA
SE	Finansinspektionen	Finansinspektionen
SI	Securities Market Agency	SMA
SK	National Bank of Slovakia	NBS

# 1 Executive Summary

1. Peer reviews are key tools in assessing the degree of existing supervisory convergence and setting out where future necessary convergence should occur. However, convergence can only be achieved if assessment of the outcomes is reviewed and where necessary remedial actions are taken and implemented into national supervisory practices. It is therefore of utmost importance to monitor follow-up actions taken by national competent authorities (NCAs) to address the findings of any peer review.
2. This report provides an update on the actions NCAs have undertaken further to the 2015 Peer Review on Best Execution under MiFID. MiFID's best execution requirements are an important component of investor protection as they are designed to promote both market efficiency generally and the best possible execution results for investors individually.
3. The 2015 peer review report found that the level of implementation of best execution provisions, as well as the level of convergence in the general supervisory practices by NCAs, was relatively low<sup>1</sup>. In particular, 15 NCAs were found not applying or partly applying criteria considered essential for ensuring an effective best execution under MiFID. As a result, the 2015 Peer Review report encouraged NCAs to devote sufficient attention and resources to the supervision of best execution as well as to pro-actively monitor compliance with best execution both through desk-based reviews, by employing a variety of information sources, as well as through on-site inspections<sup>2</sup>.
4. The follow-up work was launched in September 2016 through letters by ESMA's Chair addressed to those 15 NCAs that were found not compliant or partially compliant.
5. Information gathered shows clear improvements in the level of attention that NCAs pay to the supervision of best execution requirements. In general, a more pro-active supervisory approach is applied to monitoring compliance with best execution requirements and best execution appears to have been given higher prioritisation as a conduct of business supervisory issue.
6. Based on the information communicated to ESMA, it appears that most NCAs have taken general or specific action that should allow for an effective application of the best execution provisions, directly or indirectly.
7. As regards general actions reported, several NCAs (BG, CY, EE, LI, LT, LV, RO) indicated that they had introduced or reinforced risk-based supervision of best execution after the 2015 peer review. While the characteristics of such risk based approaches vary in terms of information sources, considered risk factors or in the way the risk-based

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<sup>1</sup> Paragraph 43 of the February 2015 Report.

<sup>2</sup> Paragraphs 45, 46, 48 of the February 2015 Report

assessment influences the prioritisation of supervisory action, best execution is referred to explicitly in all those approaches.

8. In addition, several NCAs reported specific action directly targeting best execution through thematic work, either in the form of desk-based reviews of the best execution policies and procedures (EE, PL) or of on-site visits aiming at reviewing samples of execution orders (BG, CY, DK, MT). Other NCAs (LI, RO), that use external auditor reports in their supervision, reported a pro-active use of additional sources of information for the supervision of best execution, as a way to strengthen their capacity to actively monitor compliance with the related requirements.
9. Overall, 5 NCAs (CY, HU, LT, MT, PL) have reported to have taken action that addressed the deficiencies identified by the 2015 peer review. Most importantly, in PL the national law has been reviewed and the exemption to best execution requirements for firms in certain situations has been removed. For the remaining 10 NCAs (BG, DK, EE, EL, LI, LV, RO, SE, SI, SK) some of the deficiencies still remain.
10. In general, the findings from the follow-up were positive. Many of the NCAs identified in the original peer review as having partial or not sufficient application of certain aspects of the peer review were able to show that progress had been made.
11. Among the NCAs which were not in a position to show progress in relation to deficiencies previously identified, some indicated that the 2015 findings had not been fully considered yet. Others (DK, EE, EL, SE, SI) provided similar reasons as already expressed in 2015. These reasons build on a combination of internal organizational aspects (e.g. a risk-based approach not identifying best execution as a high risk for investor protection or limited resources) as well as reported specificities of the national markets (e.g. the limited size of the markets or the very small number of consumer complaints related to best execution), which lead those NCAs not to prioritize follow-up action as potential breaches of best execution provisions would not be regarded as a substantial risk area for investors in their jurisdictions. The low level of complaints was referred to by other NCAs as well, but as previously noted in the 2015 peer review report, a low level of complaints could be attributed to ignorance by investors of the best execution requirements and should not be taken as a reliable measure of compliance.
12. By contrast, as part of MiFID supervisory and MiFID2 preparatory work, other large and small NCAs, not subject to this follow-up, have carried out specific best execution thematic work or engaged with the industry. These initiatives highlighted that many firms lack effective monitoring capability to identify best execution failings or poor client outcomes. Two NCAs subsequently provided good and poor practices, as well as clear recommendations to assist their industry in developing innovative and effective best execution management tools and procedures. Both these NCAs also sought to examine and to tackle conflicts of interest in the marketplace around payment for order flow. Another NCA issued an industry letter following a thematic review on best execution, requiring investment firms in its Member State to undertake a review of all procedures to monitor the effectiveness of their best execution and to be able to demonstrate such monitoring.



13. NCAs therefore should be mindful of these initiatives to address best execution issues and consider similar approaches within their jurisdictions.
14. To conclude, ESMA wishes to stress the importance of continued efforts to reach a high level of supervision in respect of the best execution requirements, as only a regular and pro-active supervision can ensure an appropriate level of investor protection.
15. ESMA is committed to continue fostering supervisory dialogue within different fora on the application of best execution rules and trust that all NCAs will make or continue to make every effort to comply fully with the best execution provisions enshrined in MiFID and its recast version MiFID2-MiFIR.

## 2 Introduction

16. The present report deals with the actions those NCAs have taken further to the 2015 peer review report on Best Execution under MiFID (ESMA/2015/494) that were found partially or insufficiently applying certain criteria established for the peer review. All ESMA Members and Observers except Iceland (IS) contributed to the 2015 peer review. The peer review allowed a first assessment on whether the intended increase in competition as envisaged by MiFID in order to benefit retail investors was implemented and enforced by the national regulators under the best execution obligations. The value of the peer review report was increased by the fact that a number of authorities were visited onsite (ES, FR, LI, LU, MT, PL), three of which are subject to this follow-up report (LI, MT, PL). In general, the report concluded that “The level of implementation of best execution provisions, as well as the level of convergence in the general supervisory practices by NCAs, is relatively low.”<sup>3</sup>
17. In the past, ESMA has undertaken follow-up peer reviews on the Peer Review on Supervisory Practices against Market Abuse, as well on the Peer Review on the Money Market Funds Guidelines. At the time, undertaking a fully-fledged peer review as a follow-up was deemed necessary, in particular as several NCAs hadn’t participated to the initial peer reviews. However, when all NCAs have been assessed through a peer review then the follow-up work can concentrate on checking whether deficiencies identified have in the meantime been addressed. While the former approach has the advantage of maintaining peer pressure, and benefiting from NCAs expertise, it also entails time and resource implications. Therefore, in the run-up to the entry into application of MiFID2-MiFIR, checks on progress made by NCAs in following recommendations of earlier peer reviews on MiFID were undertaken in the more expedient form of follow-up letters from ESMA Chair, as foreseen in the Review Panel Methodology (ESMA/2013/1709).
18. With this background, and acknowledging that following up on peer reviews is essential to ensure that peer reviews can be regarded as a truly effective convergence tool, ESMA Chair sent letters on 6 September 2016 to 15 NCAs (BG, CY, DK, EE, EL, HU, LI, LT, LU, MT, PL, RO, SE, SI, SK) asking to update ESMA on any follow-up undertaken to address the findings from the 2015 Report. ESMA Chair received responses from all 15 NCAs to which letters had been sent.

## 3 Assessment Method

19. The assessment remains within the assessment framework set by the original peer review (i.e. Key Issues, Key Questions, Benchmarks) and does not have the objective to reconsider the judgements on the application, partial application, insufficient application of the different criteria established in the 2015 peer review. The assessment has been a

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<sup>3</sup> Paragraph 43 of the February 2015 Report.

pure desk-based information gathering exercise which sought to determine whether deficiencies identified in the 2015 peer review have been addressed by the NCAs.

20. To recall, the findings of the 2015 peer review were organised around the Key Issues identified at the beginning of the assessment, as set out in the table below:

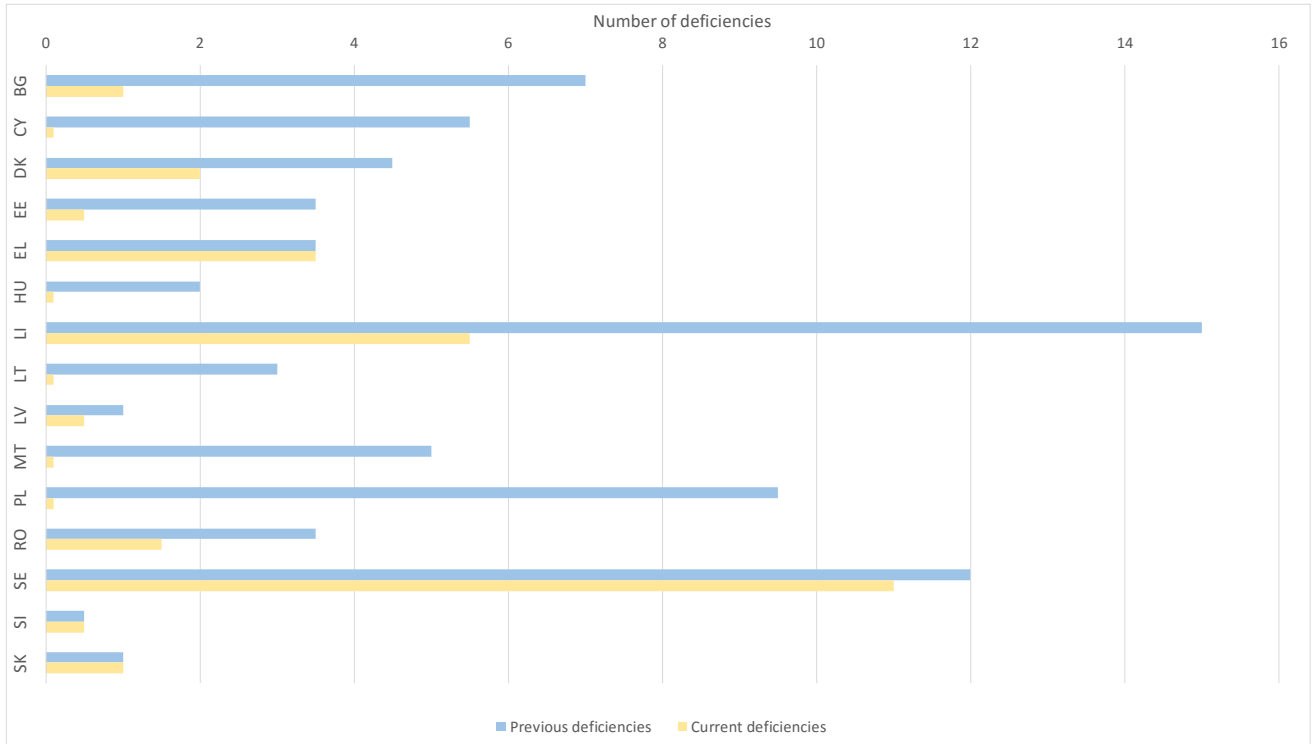
<b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b>
B.1 – Clear internal communication of supervisory approach
B.3 – Organisational structure, procedures and resources allowing appropriate supervision and enforcement
B.4 – Clear supervisory approach and relevant criteria including (i) scale of activities or volume of investment products covered, (ii) volume of complaints and alerts received, (iii) indicators from the regular review of audit report or indicators from the review of information and data transmitted by investment firms, (iv) nature of complaints and alerts received, (v) type of products.
B.5 - Active monitoring on a desk-based basis
B.6 - Periodic and non-routine onsite inspections
B.8 - Thematic work
B.9 - Effective supervision and testing of internal approaches and risk models
<b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b>
C.1 - Compliance of execution policies with MiFID
C.3 - Supervision on the involvement of the firms' compliance function and approval by the board
C.4 - Review of further documentation
C.5 - Assessment of the processes
C.6 - Review of the assessment of the execution factors
<b>D. REVIEW OF APPROPRIATE INFORMATION PROVIDED TO RETAIL CLIENTS</b>
D.1 and D.2 - Review of appropriate information to retail clients
D.3 - Review of provision of additional information to clients
D.4 - Review of appropriate arrangements and procedures to collect clients' consent
<b>E. SUPERVISION OF ABILITY TO DEMONSTRATE ADHERENCE TO POLICY</b>
E.1 - Supervision of firms' ability to demonstrate adherence to policy
E.2 - Supervision of firms' ability to obtain the best possible result on a consistent basis
<b>F. SUPERVISION OF ABILITY TO MONITOR AND REVIEW</b>
F.1, F.2 and F3 - Supervision of firms' regular monitoring and reviews of their policy and arrangements
F.4 - Monitoring techniques in relation to different instruments and orders type





## 4 Overview of the Progress made

21. The following chart provides an overview of the number of deficiencies identified in the 2015 peer review and the number of deficiencies that still remain to be addressed:



22. The table below provides an overview of the conclusions reached per NCA in the context of the follow-up work.

<b>NCA</b>	<b>Findings of the 2015 peer review</b>	<b>Detailed findings of the follow-up</b>	<b>Conclusions of the follow-up</b>
BG	Insufficient : B (B1, B3, B4, B5, B8, B9), C (C3)	B1, B3, B4, B5, B8 – deficiencies addressed B9, C3 – partly addressed	Progress was made. Deficiencies under B9 only partly addressed as no details were given by the FSC on its formalised internal procedures or established clear practices for the supervision of best execution. C3 is partly addressed while internal procedures have been put in place, the FSC has not shown how the approval of the best execution policy by the board/senior management of firms is reviewed.
CY	Partial: D (D3) Insufficient: B (B5, B9), C (C1, C5, C6)	B5, B9, C1, C5, C6, D3 – deficiencies addressed	Considerable improvements. The deficiencies identified during the 2015 peer review seem to have been addressed. CySEC has upgraded its supervisory approach and practices.
DK	Partial: C (C6) Insufficient: B (B3, B4, B5, B9)	B4, B5, C6 – deficiencies addressed B3, B9 – deficiencies remain	Certain improvements noted, such as specific on-site investigations in 2015, establishment of a supervisory prioritisation system. The response does not address the specific points raised under B3, B9, namely that supervisory activities are rather done on an ad-hoc basis than in a systematic and routine manner; that resources are limited (B3); and that there are no formalised internal procedures or established clear practices for the supervision of best execution (B9). The Danish FSA reported that its “2020 Strategy” might bring improvements in this respect. The B4, B5, C6 deficiencies have been addressed.
EE	Partial : C (C6) Insufficient: B (B5, B8, B9)	B5, B8, B9 – deficiencies addressed C6 – deficiencies remain	Several deficiencies have been addressed through building up a more strategic view to best execution and thematic work. However, the response does not address the specific points raised under C6. The B5, B8, B9 deficiencies have been addressed.
EL	Partial : C (C6) Insufficient: B (B4, B5, B9)	B4, B5, B9, C6 – deficiencies remain	The deficiencies identified in 2015 remain. It has to be noted that HCMC intends to address deficiencies B4 and B9 in the coming months through enhancing and fully automating its risk assessment and management policy. For B5, the HCMC intends to introduce an obligation for investment firms to report to it periodically on the implementation of the best execution principles. For C6 the HCMC intends to proceed to reviews on best execution with respect to selected issues considered to be of major importance in order to determine whether further enhancements are required.
<b>NCA</b>	<b>Findings of the 2015 peer review</b>	<b>Detailed findings of the follow-up</b>	<b>Conclusion of the follow-up</b>

HU	Insufficient: B (B5, B9)	B5, B9 – deficiencies addressed	Deficiencies were addressed (B5, B9), MNB stated that investment firms are obliged to report data on clients' transactions volumes as well as the number of consumer complaints regularly to the MNB, which makes the MNB capable of continuous monitoring.
LI <sup>4</sup>	Insufficient: B (B4, B5, B9), C (C1, C5, C6), D (D1, D2, D3), E (E1, E2), F (F1, F2, F3, F4)	B5, B9, C1, D1, D2, D3, E1, E2, – deficiencies addressed B4, C5, C6 – partly addressed F1, F2, F3, F4 – deficiencies remain	<p>The 2015 peer review found that “there is lack of clarity on what MiFID business/services asset management firms undertake/perform, and this is combined with asset management firms not applying best execution requirements”. In response to this, the FMA stated that due to local specificities, it is the custodian bank that has the duty of best execution as it is the entity who executes the order.</p> <p>Several points improved, such as FMA enhanced its risk based approach and relies less exclusively on external auditors in supervision. While improvement was noted in respect of C5, C6, the FMA did not explain how they assess the processes used by the firms or banks to select execution venues and whether these execution venues insure the delivery of best execution for clients. Therefore, C5, C6 are partly addressed.</p> <p>For F1, F2, F3, F4 the deficiencies remain. These issues have not been addressed in the response of the FMA.</p>
LT	Insufficient: B (B5, B9), C (C1)	B9, C1 – deficiencies addressed B5 deficiencies remain	Deficiencies are addressed through the revision of earlier supervisory processes, the introduction of a risk-based approach to supervision. Information was also provided on the different sources of information to conduct desk-based assessments. For B5, i.e. active monitoring on a desk-based basis, the deficiencies remain.
LV	Partial : B (B8, B9)	B9 – deficiencies addressed B8 – deficiencies remain	Deficiencies are partly addressed through the adoption of an internal manual setting out the supervisory approach for MiFID supervision, incl. best execution. No thematic work has been undertaken (B8). The B9 deficiencies has been addressed. For B8 the deficiencies remain.
<b>NCA</b>	<b>Findings of the 2015 peer review</b>	<b>Detailed findings of the follow-up</b>	<b>Conclusion of the follow-up</b>

<sup>4</sup> This NCA had been on-site visited during the review.

MT <sup>5</sup>	Partial: B (B3, B4, B5, B9), C (C4, C5, C6), D(D3), E (E2), F (F4)	B3, B4, B5, B9, C4, C5, C6, D3, E2, F4 – deficiencies addressed	Considerable progress made. There has been internal restructuring of units, a thematic review has been undertaken on best execution, a checklist introduced for supervision of best execution, in addition the MFSA states that it updates and challenges its risk monitoring system on an annual basis.
PL <sup>6</sup>	Partial: E (E2) Insufficient: B (B3, B4, B5, B6, B8, B9), C (C1, C3, C4)	B3, B4, B5, B6, B8, B9, C1, C3, C4, E2 – deficiencies addressed	Considerable improvements, legal framework modified, updated, guidelines developed. The B3, B4, B5, B6, B8, B9, C1, C3, C4, E2 deficiencies have been addressed.
RO	Partial: D (D3) Insufficient: B (B4, B5, B9)	B4, B5 – deficiencies addressed B9, D3 – deficiencies remain	While it is worth noting the enhancement of risk-based supervision and the changes made in the organisational structure, the response provided by the Romanian FSA does not always address the specific points raised in the 2015 peer review. The B4, B5 deficiencies have been addressed. For B9, D3 the deficiencies remain, i.e. there is no evidence of formalised internal procedure or established clear practices for supervision of best execution, or of review of provision of additional information to clients.
SE	Partial: C (C5, C6) Insufficient: B (B5), D (D1, D2, D3, D4), E (E1, E2), F (F1, F2, F3, F4)	B5 – deficiencies partly addressed C5, C6, D1, D2, D3, D4, E1, E2, F1, F2, F3, F4 – deficiencies remain	While organisational changes have taken place, and a high number of on-site inspections on MiFID issues (where best execution was not identified as area with risks), the response provided by Finansinspektionen does not provide information on the specific points raised during the peer review. For B5, deficiencies are partly addressed. For C5, C6, D1, D2, D3, D4, E1, E2, F1, F2, F3, F4 deficiencies remain.
SI	Partial: B (B9)	B9 – deficiencies remain	The peer review found one deficiency, that was of partial application. On this point, there has not been any developments. For B9 the deficiency remains.
SK	Insufficient: B (B5)	B5 – deficiencies remain	The peer review found one deficiency, that was of insufficient application. On this point, there has not been any developments. NBS tackles compliance with best execution through onsite inspections. For B5 the deficiency remains.

<sup>5</sup> This NCA had been on-site visited during the review.

<sup>6</sup> This NCA had been on-site visited during the review.

## 5 Detailed Findings of the Follow-up

The following section presents the findings of the follow-up on an NCA per NCA basis.

### 5.1 FSC Bulgaria

23. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B1, B3, B4, B5, B8, B9), and C “Supervision of best execution arrangements and policies” (C3).

**The main points the FSC mentioned in response to the ESMA Chair’s letter were the following:**

24. The supervision of the investment firms realized by ‘Investment Firms and Securities Markets’ Department at the Financial Supervision Commission, where 9 persons are working.
25. Currently, there are 62 entities, which operate on the market and have a license under MiFID to provide investment services and conduct investment activity. The FSC exercises control over 41 of these entities for the compliance with the provisions of MiFID, CRR/CRD and EMIR (while 21 of them are banks).
26. There is an established organization where the supervision of the capital position and liquidity is mainly off-site, and for the compliance with the requirements of MiFID and EMIR, thematic on-site inspections have been conducted considering the fact that the compliance with these provisions would be more difficult to inspect through off-site means.
27. Regardless of this circumstance, a risk-based analysis in relation to investment firms is introduced, which to improve the planning and action taking process, including in connection with Best execution.
28. Preparation and/or update of the present guidelines for on-site inspections of investment firms for the compliance with the requirements of the Directive to conduct of business (appropriateness, suitability, best execution etc.) is being realized. The guidelines include “step- by-step” instructions for the inspections and the tests, as well as a means for the determination of an evaluation, which reflects the deviation degree from the requirements. Special attention is paid to the FSC’s role to inform investors and to clarify their rights in relation to the provision of investment services.
29. Various explanatory materials are published on the website of the FSC, and a seminar is organized which is directed towards the raising of their awareness regarding the financial instruments market.

30. The FSC has formally introduced the ESMA Guidelines on certain aspects of the MiFID compliance function requirements in FSC's Ordinance 38. The main goal is to ensure that the internal control unit has the clearest possible view on the way the investment firm receives and executes clients' orders. This particular requirement (along with others) has been subject to 6 inspections in the last year and in 5 of the cases specific recommendations were issued by the FSC in this regard.

**The assessment concludes as detailed in the table hereafter:**

31. The B1, B3, B4, B5, B8 deficiencies have been addressed, B9, C3 have been partly addressed.
32. Progress has been made. Deficiencies under B9 have only been partly addressed as no details were given by the FSC on its formalised internal procedures or established clear practices for the supervision of best execution. C3 is only partly addressed while internal procedures have been put in place, the FSC has not shown how the approval of the best execution policy by the board/senior management of firms is reviewed.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.1 – Clear internal communication of supervisory approach</b></p> <p>In BG, the CA asserts to have internal communication, but did not provide details on the means used to communicate their respective supervisory approach internally.</p> <p><b>B.3 – Organisational structure, procedures and resources allowing appropriate supervision and enforcement</b></p> <p>CA has not been able to show that the supervision of best execution, is part of the CAs established organisational structure, procedures and resources,</p> <p>in BG, the CA mentioned that the staff has to follow a handbook for inspections, but has not explained how staff is instructed to ensure appropriate supervision and enforcement where tools other than on site visits are employed.</p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b></p> <p>BG has not been able or has been able to only partially show that they extensively apply the key issues set forth in this peer review as regards the supervisory approach. In particular, BG stated that they employ all the aforementioned factors, but have not provided sufficient evidence or explanations in this respect;</p> <p><b>B.5 - Active monitoring on a desk-based basis</b></p> <p>Active desk based monitoring of best execution does not take place extensively because: BG performs active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources.</p> <p><b>B.8 - Thematic work</b></p>	<p><b>B.1 – deficiencies addressed</b></p> <p><b>B.3 – deficiencies addressed</b></p> <p><b>B.4. – deficiencies addressed</b></p> <p><b>B.5. – deficiencies addressed</b></p> <p><b>B.8 – deficiencies addressed</b></p>

<p>BG has not been able to show that they have established an approach to determine on what topics to undertake thematic work (whether or specifically on best execution), since they appear to make use only of other monitoring tools (e.g. reviews and onsite inspections on individual firms), or carry out thematic work on a very limited basis (e.g. only when participating in conferences or hearings with firms).</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b></p> <p>BG has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b></p> <p><b>C.3 - Supervision on the involvement of the firms' compliance function and approval by the board</b></p> <p>BG has not been able to show how they review that the compliance- function is appropriately involved in the development, application and review of the execution policy and that the execution policy is approved by the board/senior management:          •BG does not show how the approval of the best execution policy by the board/senior management is reviewed.</p>	<p><b>B.9. – deficiencies partly addressed</b>          FSC has not presented its formalised internal procedures or established clear practices</p> <p><b>C.3. – deficiencies partly addressed</b>          FSC has not addressed the issue of the board/senior management involvement</p>
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## 5.2 CySEC Cyprus

33. The 2015 peer review report noted insufficient application of B “Organisation and general approach concerning the supervision of best execution” (B5, B9), C “Supervision of best execution arrangements” (C1, C5, C6) and partial application of D “Review of appropriate information provided to retail clients” (D3). It has to be noted that CySEC had been on-site visited during the review.

**The main points the CySEC mentioned in response to the ESMA Chair’s letter were the following:**

34. B. 5. - CySEC developed in 2015, a tool for performing tests on orders and transactions executed by Cyprus Investments Firms ('CIFs') and especially CFDs providers. The purpose of this tool is to establish whether these firms meet the various requirements of best execution (“BE”).
35. B.9. - The Risk Based Supervision Framework - RBSF, was implemented in late 2015 with the aim to allow for a more efficient allocation of resources by focusing supervision where there is more risk, to provide a more comprehensive framework of all supervisory areas and to facilitate a more strategic view of market issues. It was utilized in the preparation of the 2016 supervision program. The RBS-F framework is monitored and reviewed as part of an annual process, so as to be adjusted to current market practices and characteristics, so that to confirm it is functioning in an effective manner to capture the most significant risks.

36. An internal procedure was developed to verify the RBS-F framework and to test its approach to MiFID CoB provisions, including best execution. The RBS-F framework is monitored and reviewed as part of an annual process, so as to be adjusted to current market practices and characteristics, so that to confirm it is functioning in an effective manner to capture the most significant risks.
37. C. - CySEC developed in 2014 a comprehensive Audit program for BE which covers the following areas: Supervision of BE arrangements and Policy; Disclosure and Consent of Execution Policy; Monitoring and Review of BE by the CIF; Supervision of ability to demonstrate adherence to the BE policy; Systems and Trades testing Results; Assessment of senior management and compliance officers' performance of their duties with respect to the BE Policy. During 2014-2016, six on- site checks were conducted covering all areas mentioned above. Various weaknesses were identified in all six CIFs and CySEC. For one CIF, a fine of €20.000 was imposed for non - compliance with article 21 of MiFID.
38. A second more specialised audit program for BE was developed by CySEC, in 2014, with the assistance of external consultants. This Audit program has the aim to inspect the technical settings of the systems used by CIFs and specifically by CFDs providers for executing their clients' orders in order to assess whether the arrangements set by the them follow the BE rules. During 2014-2015 six on-site checks were conducted testing this specific technical program.
39. C.1 - CySEC developed a comprehensive Audit program for BE and conducted six on-site checks during 2014-2016 assessing various aspects of BE including the compliance of CIFs' Execution policy with MiFID.
40. C.5 - One of the aspects of the Supervision of BE arrangements and Policy was the assessment of the processes followed by the CIFs to select the venues/ entities that were included in the Policy.
41. C.6 - CySEC conducted a review of the assessment of the execution factors. Specifically, it was assessed whether the execution policy includes the process for determining the relative importance that the CIFs place on the execution factors.
42. D.3 - The review of the provision of additional information to clients was included in the Audit program and specifically under the area of the Supervision of disclosure and consent. It was tested during the on - site checks.

**The assessment concludes as detailed in the table hereafter:**

43. The B5, B9, C1, C5, C6, D3 deficiencies have been addressed.
44. There were considerable improvements. The deficiencies identified during the 2015 peer review seem to have been addressed. CySEC has upgraded its supervisory approach and practices.



Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.5 - Active monitoring on a desk-based basis</b> Active desk based monitoring of best execution does not take place extensively because: the CA performs active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources;</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b> CY has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b></p> <p><b>C.1 - Compliance of execution policies with MiFID</b> CY has not been able to show if or how they carry out the assessment on whether firms put in place arrangements for best execution and a policy which summarises those arrangements: in CY the CA does not seem to perform any independent ongoing supervision in this respect (the assessment is done only at authorisation);</p> <p><b>C.5 - Assessment of the processes</b> CY has not been able to show if and how they assess whether the processes used by the firms to select the venues/entities included in the “policy” (for firms transmitting client orders or decisions to deal) or execution policy (for firms that execute orders or decisions to deal) are capable of achieving compliance with their best execution obligations: the CA of CY reported that they do not assess this;</p> <p><b>C.6 - Review of the assessment of the execution factors</b> CY has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result: CY reported that they do not conduct this review;</p> <p><b>D. REVIEW OF APPROPRIATE INFORMATION PROVIDED TO RETAIL CLIENTS</b></p> <p><b>D.3 - Review of provision of additional information to clients</b> The CA of CY reported that they do not review that any additional information about the execution policy of firms which execute orders or decisions to deal is disclosed to the firms’ retail clients as a matter of course or upon request.</p>	<p><b>B.5 – deficiencies addressed</b></p> <p><b>B.9 – deficiencies addressed</b></p> <p><b>C.1 – deficiencies addressed</b></p> <p><b>C.5 – deficiencies addressed</b></p> <p><b>C.6 – deficiencies addressed</b></p> <p><b>D.3 – deficiencies addressed</b></p>

### 5.3 Finanstilsynet Denmark

45. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B3, B4, B5, B9) and partial application of C “Supervision of best execution arrangements and policies” (C6).

**The main points the Finanstilsynet (Danish FSA) mentioned in response to the ESMA Chair’s letter were the following:**

46. Concerning the issue of resources used to best execution supervision, the overall amount of resources dedicated to the supervision of investor protection rules, including best execution, has, since the peer review was conducted, remained at a constant level. The consumer division of the Danish FSA did, however, in 2015 identify best execution as a priority area and conducted onsite investigations of four credit institutions holding an investment firm license (two SIFI institutions and two medium sized banks) in which all aspects of the banks’ compliance with the best execution rules were scrutinized (C6).
47. Concerning resources, the Danish FSA believes that the supervisory priorities (including resource allocation) is a strictly national prerogative and not something ESMA should express its opinion on. Secondly, even if the Danish FSA’s resource allocation to best execution supervision is limited compared to other NCAs, this does not necessarily mean that it is an insufficient allocation.
48. With regards to the extremely low number of complaints received by the Danish FSA relating to best execution, the FSA’s general assessment of the nature of the Danish capital market and the nature of the investment firms and banks under supervision, not to mention the resources available to the Danish FSA, the Danish FSA remains convinced that the risk based approach to supervision (in which ad hoc investigations is the usual approach) is the most cost effective way to conduct supervision of investor protection rules.
49. The Danish FSAs’ supervisory planning is today, among other things, based on a systematic use of the information available, including for example, number of complaints, whistle blower contacts and news articles.
50. The Danish FSA applies a risk based approach, and based on the very low number of complaints relating to best ex received by the Danish FSA we find that the level of resources is justified. Supervisory priorities (including resource allocation) is a strictly national prerogative.
51. The Danish FSA’s “2020 Strategy” includes a particular focus on strengthening the supervisory activities on consumer related issues, including investor protection which will result in structural changes of the Danish FSA with the intention to build professionally stronger supervisory units.

**The assessment concludes as detailed in the table hereafter:**

52. The B4, B5, C6 deficiencies have been addressed, while the B3, B9 deficiencies remain.

53. Certain improvements noted, such as specific on-site investigations in 2015, establishment of a supervisory prioritisation system. The response does not address the specific points raised under B3, B9, namely that supervisory activities are rather done on an ad-hoc basis than in a systematic and routine manner; that resources are limited (B3); and that there are no formalised internal procedures or established clear practices for the supervision of best execution (B9). The Danish FSA reported that its “2020 Strategy” might bring improvements in this respect.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.3 – Organisational structure, procedures and resources allowing appropriate supervision and enforcement</b>            DK has not been able to show that the supervision of best execution, is part of the CAs established organisational structure, procedures and resources: in DK the CA has not so far systematically and routinely conducted supervisory activities focused on best execution; investigation on this topic have been merely ad hoc. The resources dedicated to it appear to be limited;</p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b>            DK has not or has been able to only show partially that they extensively apply the key issues set forth in this peer review as regards the supervisory approach. In particular DK does not appear to make use of indicators from the review of information and data transmitted by investment firms, nor of the regular review of audit reports (factor under (iii) above). The CA of DK also pointed out that the other factors are used indirectly and not in a systematic or formalised way.</p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            In DK, active desk based monitoring of best execution does not take place extensively because the desk based reviews do not include:            periodic reporting by firms or independent auditors;            information from other competent authorities, where available;            any of the sources of information listed in the key issue relating to active desk based monitoring;</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b>            DK has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p>	<p><b>B.3 – deficiencies remain</b> – Supervisory activities are rather done on an ad-hoc basis than in a systematic and routine manner. Danish FSA stated that resources remained at a constant level since the peer review.</p> <p><b>B.4 – deficiencies addressed</b></p> <p><b>B.5 – deficiencies addressed</b></p> <p><b>B.9 – deficiencies remain</b>            Danish FSA has not reported of formalised internal procedures or established clear practices for the supervision of best execution. The Danish FSA reported that its “2020 Strategy” might bring improvements in this respect</p>
<p><b>Findings 2015 Peer Review Report</b></p>	<p><b>Findings Follow-up</b></p>
<p><b>C.6 - Review of the assessment of the execution factors</b>            DK has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result: DK reported that they do not conduct this review.</p>	<p><b>C.6 – deficiencies addressed</b></p>

## 5.4 EFSA Estonia

54. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B5, B8, B9) and partial application of C “Supervision of best execution arrangements and policies” (C6).

**The main points the EFSA mentioned in response to the ESMA Chair’s letter were the following:**

55. Finantsinspeksioon reported that due to the limited size of Estonian market, the organization of supervisory tasks is correspondingly arranged. There has always been a complex approach to the supervision of MiFID Best Execution issues whereby the decision where to undertake thematic work does not need a formalized internal procedures and established practices to verify an approach.
56. In respect priorities Finantsinspeksioon is guided by Strategic Objectives for 2016-2018. According to Strategic Objectives for 2016-2018 the Management Board establishes an annual work plan. As stated in Strategic Objectives for 2016-2018 the rules will be applied based on risks by achieving the desired result and disclosing actions as applicable.
57. In the area of best execution, following aspects are carefully analysed: incoming client complaints; operational incidents reviews by investment services providers themselves. None of the above mentioned aspects have indicated that best execution is a substantial risk area for investors. That is the reason why the decision was made that desk-based review combined with on-site meetings are the most appropriate in the specific area.
58. It is well acquainted that client complaints are triggers for more intensive supervisory actions. Over the last five years Finantsinspeksioon has received only four complaints about best execution. There have not been any complaints about best execution during last two years. Every one of them has been investigated.
59. In November 2013 Finantsinspeksioon issued a mandatory precept to most active CFD’s and leveraged speculative investment products provider in Estonia to change and up-grade its best execution policies;
60. In 2014 Finantsinspeksioon conducted horizontal desk-based review of client order handling rules and execution in 2014. It was followed by recommendation letters to mark risk areas for every single service provider;
61. Finantsinspeksioon has taken on board ESMA’s recommendations and prioritize intermediaries who have the biggest impact on the market as a whole. However, therefore, more resources are dedicated to dealing with these companies. Indicative priorities are: 1) market share; 2) intermediaries with direct access, 3) non-complex



products, such as shares and bonds as those comprise main object of investments by investors.

**The assessment concludes as detailed in the table hereafter:**

- 62. The B5, B8, B9 deficiencies have been addressed, while the C6 deficiencies remain.
- 63. Several deficiencies have been addressed through building up a more strategic view to best execution and thematic work. The response of EFSA does not address the specific points raised under C6.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            In EE, the NCA's active desk based monitoring of best execution does not take place extensively because the NCA performs active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources.</p> <p><b>B.8 - Thematic work</b>            In EE, the NCA has not been able to show that they have established an approach to determine on what topics to undertake thematic work (whether or specifically on best execution), since they appear to make use only of other monitoring tools (e.g. reviews and onsite inspections on individual firms), or carry out thematic work on a very limited basis (e.g. only when participating in conferences or hearings with firms).</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b>            In EE, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b></p> <p><b>C.6 - Review of the assessment of the execution factors</b>            In EE, the NCA has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result. The NCA reported that they do not conduct this review.</p>	<p><b>B.5 – deficiencies addressed</b></p> <p><b>B.8 – deficiencies addressed</b></p> <p><b>B.9 – deficiencies addressed</b></p> <p><b>C.6. – deficiencies remain</b>            The response of EFSA does not address the specific points raised under C6.</p>

## 5.5 HCMC Greece

64. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B4, B5, B9) and partial application of C “Supervision of best execution arrangements and policies” (C6).

**The main points the HCMC mentioned in response to the ESMA Chair’s letter were the following:**

65. Taking into consideration inter alia the size of the Greek capital market, the size of the investment firms licensed and supervised by the HCMC, the type of financial instruments and the investment services provided by the firms, the absence of complaints, the quantitative restrictions on employment policy in public administration after the financial crisis in Greece and the new framework of MiFID II/MiFIR introducing the obligation to conduct effective market monitoring, the HCMC recognises the benefits of improving its risk assessment and management capabilities and is working towards this goal.
66. In particular, the initiative that the HCMC intends to implement in the following months is to enhance and fully automate its risk assessment and management policy through the adoption of an application that would encompass all factors required to effectively supervise Best Execution. Thus, all abovementioned factors shall be part of the enhanced supervisory practice of the HCMC and will not be employed solely for the purpose of prudential supervision.
67. B.5 - The HCMC intends to introduce an obligation for investment firms to report to the HCMC periodically on the implementation of Best Execution principles. In addition, during this procedure the HCMC is aiming to provide investment firms with clarifications and guidance.
68. B.9 - This weakness shall be addressed by implementing the risk management measures referred under point B.4. Self-assessment questionnaires, complaints by investors, desk-based and onsite inspections are the main tools used for supervision of Best Execution rules. In HCMC’s view, the supervisory tools, as well as the intensity of efforts, are proportionate to the scope of activities of investment firms. The very low number of complaints represents, in HCMC’ opinion, a strong evidence of the effective exercise of the supervisory function on Best Execution. The HCMC intends to address the peer review findings in the coming months through enhancing and fully automating its risk assessment and management policy.
69. For C6, the HCMC intends to proceed to reviews on best execution with respect to selected issues considered to be of major importance in order to determine whether further enhancements are required.

**The assessment concludes as detailed in the table hereafter:**

70. The B4, B5, B9, C6 deficiencies, identified in the 2015 peer review, remain.
71. It has to be noted that HCMC intends to address deficiencies B4 and B9 in the coming months through enhancing and fully automating its risk assessment and management policy. For B5, the HCMC intends to introduce an obligation for investment firms to report to it periodically on the implementation of the best execution principles. For C6 the HCMC intends to proceed to reviews on best execution with respect to selected issues considered to be of major importance in order to determine whether further enhancements are required.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b> In EL, the NCA seems to rely on factors (ii) and (iv) in the supervision of best execution, while the other factors are employed mainly for prudential supervision.</p> <p><b>B.5 - Active monitoring on a desk-based basis</b> In EL, the NCA desk based reviews do not include periodic reporting by firms or independent auditors.</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b> In EL, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b></p> <p><b>C.6 - Review of the assessment of the execution factors</b> In EL, the NCA has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result. The NCA reported that they do not conduct this review.</p>	<p><b>B.4. – deficiencies remain</b> It has to be noted that HCMC Greece intends to address deficiencies B4 in the coming months through enhancing and fully automating its risk assessment and management policy.</p> <p><b>B.5. – deficiencies remain</b> For B5, the HCMC intends to introduce an obligation for investment firms to report to it periodically on the implementation of the best execution principles.</p> <p><b>B.9. – deficiencies remain</b> HCMC intends to address deficiencies B9 in the coming months through enhancing and fully automating its risk assessment and management policy.</p> <p><b>C.6. – deficiencies remain</b> For C6 deficiencies the HCMC intends to proceed to reviews on best execution with respect to selected issues considered to be of major importance in order to determine whether further enhancements are required.</p>

## 5.6 MNB Hungary

72. The 2015 peer review report noted insufficient application of B “Organisation and general approach concerning the supervision of best execution” (B5, B9).

**The main points the MNB mentioned in response to the ESMA Chair's letter were the following:**

73. B5 - Although desk-based reviews in connection with the supervision of best execution related provisions are mostly linked to on-site investigations, it is important to bear in mind that in Hungary the supervision of investment firms is performed on the basis of a mixed model, in which the compliance based approach provides for a strict, regular and comprehensive investigation of each and every investment firm based in Hungary. This means that every investment firm shall go under a comprehensive investigation at least every three years. Within the framework of these comprehensive investigations, compliance with best execution provisions is also checked.
74. MNB's market monitoring department conducts on-going data analysis based on pre-defined and continuously reviewed (and if necessary amended) reporting, which also covers the assessment of transaction data from a best execution perspective. The above activities are reviewed and developed on a continuous basis, and certain changes to the framework are being currently developed.
75. The other side of MNB's mixed supervisory model: the risk-based approach, which allows MNB to align its supervisory work and planning according to the risks identified. In this sense the MNB has the ability to change its supervisory practices whenever emerging risks or material market changes occur. In this sense the existing legal framework provides sufficient flexibility for the MNB to conduct an effective supervisory work in this field. Furthermore, supervisory actions are well defined by MNB methodologies and internal procedures, which might be of a more general nature, however those also apply for 'best execution' related supervisory actions.
76. The supervised investment firms are obliged to report data on clients' transactions volumes as well as the number of received consumer complaints regularly to the MNB in order to monitor the aforementioned factors continuously. The transaction reports submitted to the MNB are well-structured that allows to track clients' transactions volumes by types of instruments (e.g. shares, debt instruments, units of investment funds etc.) as well as clients' opened positions in leveraged instruments (e.g. CFDs).
77. As far as the consumer complaints concerned, they are handled by the MNB's Consumer Protection Directorate that cooperates with and gives signals to the MNB's capital market supervisory area.
78. Data and information origins from firms reports and consumer complaints are always relevant factors that are taken into consideration when planning and determining the focus points of the investigations. To react on extraordinary cases on customer issues coming (including best execution), an operative investigation field has recently been established in order to carry out quick and targeted investigations independently from regular investigations of the 3-year cycle.

**The assessment concludes as detailed in the table hereafter:**

79. The B5, B9 deficiencies have been addressed.





84. Supervision of small investment firms acc. to Asset Management Act, for credit institutions and large investment firms acc. to Banking Act: The FMA is in possession of information on arrangements and policies and client information of all supervised small investment firms. The adherence to policies is supervised according to the risk-based supervisory examination program per firm. The FMA checks whether the policies and arrangements have been violated. Furthermore, the FMA also considers customer complaints.
85. The FMA applies a risk based supervisory approach on firm level. Each year, all supervised MiFID investment firms are subject to a comprehensive risk assessment regarding all applicable legal provisions, including MiFID.
86. The FMA reviews all execution policies and checks in on-going supervision that the execution factors are considered by all investment firms. In practice the execution channel in the case of a discretionary portfolio manager is always the specific custodian bank. The client selects the custodian bank and mandates the investment firm then to manage the assets. Transactions are usually entered into the e-banking system of the custodian bank by the portfolio manager and then the bank executes the orders according to their best execution policy.
87. The FMA reviews all execution policies and checks in on-going supervision that the execution factors are considered by all investment firms.
88. On the issue of application of best execution by portfolio managers, the FMA stated that these portfolio managers have no rights to hold client assets or client funds. Those services are carried out by the custodian bank; so to hold any assets a client must hold an account with a custodian bank. The choice of the custodian bank is made by the client. The role of the portfolio manager is to decide that assets should be held in the client's portfolio. The portfolio manager will then place the order with the bank chosen by the client for execution (this right will have been established through the portfolio management agreement). The FMA stated that as a result, it is the custodian bank who has the duty of best execution as it is the entity who executes the order.
89. The portfolio manager still has execution obligations in respect of the placing of the client order. However, as the client has through the portfolio management agreement already placed a specific instruction on where any orders should be executed (i.e. through the custodian bank), its best execution obligations are effectively removed.
90. The FMA also clarified that there are no payments or other kinds of inducements made from the custodian bank to the portfolio manager in respect of any orders placed. The portfolio manager is entirely remunerated by the client as a percentage of AUM.

**The assessment concludes as detailed in the table hereafter:**

91. The B5, B9, C1, D1, D2, D3, E1, E2 deficiencies have been addressed, the B4, C5, C6 deficiencies have been partly addressed, while the F1, F2, F3, F4 deficiencies remain.

92. The 2015 peer review found that “there is lack of clarity on what MiFID business/services asset management firms undertake/perform, and this is combined with asset management firms not applying best execution requirements”. In response to this, the FMA stated that due to local specificities, it is the custodian bank that has the duty of best execution as it is the entity who executes the order, please see above.
93. Several points improved, such as FMA enhanced its risk based approach and relies less exclusively on external auditors in supervision. While improvement was noted in respect of C5, C6, the FMA did not explain how they assess the processes used by the firms or banks to select execution venues and whether these execution venues insure the delivery of best execution for clients. Therefore, C5, C6 are partly addressed.
94. For F1, F2, F3, F4, the deficiencies remain. These issues have not been addressed in the response of the FMA.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b>            In LI, the NCA has not been able or have been able to only show partially that they extensively apply the key issues set forth in this peer review as regards the supervisory approach.            The NCA appears to mostly rely on annual external audit reviews.            There is a lack of clarity on what MiFID business/services asset management firms undertake/perform and this is combined with asset management firms not applying best execution requirements’.</p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            The active desk based monitoring of best execution does not take place extensively because weaknesses are monitored mostly on the basis of external audit reports and, where available, customers’ complaints; in their desk-based reviews the CAs appear to place excessive reliance on external sources, without carrying out sufficient own analysis.</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b>            These CAs (BG, CY, DK, EE, EL, HU, LI, LT, LV, MT, PL, RO, SI) have not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b></p> <p><b>C.1 - Compliance of execution policies with MiFID</b>            In LI, the NCA has not been able to show if or how they carry out the assessment on whether firms put in place arrangements for best execution and a policy which summarises those arrangements. The NCA sustains that firms do not need to consider the execution factors because the entity to which orders are routed (the custodian bank specified by the client) is responsible for best execution, while asset management companies perform an entirely passive role in this respect;</p> <p><b>C.5 - Assessment of the processes</b></p>	<p><b>B.4 – partly addressed</b> The FMA seems to be less reliant on external audit. Risk based approach has been developed.</p> <p><b>B.5 – deficiencies addressed</b></p> <p><b>B.9 – deficiencies addressed</b></p> <p><b>C.1 – deficiencies addressed</b></p> <p><b>C.5 – deficiencies partly addressed</b></p>

<p>In LI, the NCA has not been able to show if and how they assess whether the processes used by the firms to select the venues/entities included in the “policy” (for firms transmitting client orders or decisions to deal) or execution policy (for firms that execute orders or decisions to deal) are capable of achieving compliance with their best execution obligations. The NCA stated that firms do not need to consider the execution factors because the custodian bank to which orders are routed is responsible for best execution. LI explained that the portfolio manager in such instances is transmitting the order to an entity requested by the client and this entity the custodian bank holds the responsibility for ensuring best execution for the client</p> <p><b>C.6 - Review of the assessment of the execution factors</b> In LI, the NCA has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result. It is not clear how the CA reviews the entire execution chain and ensures application of the best execution provisions.</p> <p><b>D.1 and D.2 - Review of appropriate information to retail clients</b> The NCA of LI reported that they do not review that firms provide appropriate information to retail clients to enable an adequate understanding about the key aspects of the firms’ execution policy (for firms that execute orders or decisions to deal on behalf of client portfolios) or policy (for firms that transmit orders or decision to deal) and that this information is in fact disclosed.</p> <p><b>D.3 - Review of provision of additional information to clients</b> The NCA of LI reported that they do not review that any additional information about the execution policy of firms which execute orders or decisions to deal is disclosed to the firms’ retail clients as a matter of course or upon request.</p> <p><b>E.1 - Supervision of firms’ ability to demonstrate adherence to policy</b> In LI, the NCA reported that they do not review firms’ procedures and arrangements for demonstrating, at a client’s request, that they have executed any individual order or decision to deal in compliance with their execution policy. In the case of LI, the CA sustains that their approach is justified since in their market firms merely pass orders to one trading entity (the “custodian bank”).</p> <p><b>E.2 - Supervision of firms’ ability to obtain the best possible result on a consistent basis</b> In LI the NCA does not review that the firm is able to demonstrate that it can obtain the best possible result on a consistent basis, as long as the firm has only one execution venue listed in its execution policy for a particular type of financial instrument.</p> <p><b>F.1, F.2 and F3 - Supervision of firms’ regular monitoring and reviews of their policy and arrangements</b> In LI, the NCA indicated that they do not assess whether firms have put in place appropriate processes: (i) for monitoring, on a regular basis, the effectiveness of their best execution arrangements and policies; (ii) for reviewing their policies and arrangements on a regular basis; (iii) for reviewing their policies and arrangements in light of a material change that affects the firms’ ability to achieve the best possible result on a consistent basis.</p>	<p>The FMA did not explain how it assesses the processes used by firms to select execution venues and whether these execution venues insure the delivery of best execution.</p> <p><b>C.6 – deficiencies partly addressed</b> The FMA did not explain how it assesses the processes used by firms to select execution venues and whether these execution venues insure the delivery of best execution.</p> <p><b>D.1, D.2 – deficiencies addressed</b></p> <p><b>D.3 – deficiencies addressed</b></p> <p><b>E.1 – deficiencies addressed</b></p> <p><b>E.2 – deficiencies addressed</b></p> <p><b>F.1 – deficiencies remain</b> <b>F.2 – deficiencies remain</b> <b>F.3 – deficiencies remain</b> FMA’s response does not provide information</p>
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<p><b>F.4 - Monitoring techniques in relation to different instruments and orders type</b> In LI, the NCA indicated that they do not check whether firms' monitoring techniques vary according to instrument type or order type.</p>	<p>on whether it assesses these issues.</p> <p><b>F.4 – deficiencies remain</b> FMA's response does not provide information on whether it checks these issues.</p>
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## 5.8 LB Lithuania

95. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B5, B9), C “Supervision of best execution arrangements and policies” (C1).

**The main points the LB mentioned in response to the ESMA Chair’s letter were the following:**

96. Financial services in Lithuania are supervised applying risk-based supervision principles for consumer protection and resources are allocated to financial services and products that pose the greatest risk to consumers.
97. Every year the Supervision Service of the Bank of Lithuania creates a financial products risk map, based on the financial product risks to consumers and the significance of the product (size of the market). The risk evaluation is based on results of inspections, thematic reviews, product analysis carried out by the Supervision Service, data of disputes and complaints and covers areas such as the corporate culture of the market participants, product design, oversight, governance and distribution processes, information disclosure, flexibility and other characteristics of the product. The main risk areas in recent years have consisted of private pension funds, unit-linked life insurance and consumer credits. A number of regulatory changes, supervisory actions or changes in supervision processes have been initiated in these areas.
98. Moreover, a revision of the existing supervision processes and documentation regarding financial services was initiated in 2015 and is expected to be finalised by the Q1 of 2017. The supervision process will be amended according to the Concept of Risk Assessment System approved by the Committee of the Supervision Service, as follows: • all financial products and services will be assigned to one of four categories according to the risks they pose for consumers; • the evaluation of product/service risks will be based on qualitative and quantitative • the intensity of supervisory actions and/or regulatory changes initiated will depend on the product risk category.
99. As regards the assessment of whether firms put in place arrangements for best execution and a policy which summarises those arrangements, the Supervision Service checks if the firm has adopted an execution policy and arrangements and that they are compliant with MiFID requirements at the authorisation stage as well as during on-site inspections.

100. Inspections cover whether the execution policy: -includes the key steps the firm is taking to comply with the best execution requirements and how those steps enable the firm to obtain the best possible result; -takes into account the relative importance, or the process for determining the relative importance, the firm places on the execution factors;- describes how those factors affect the firm's choice of execution venues or entities to which it transmits orders;-sets out those venues the firm uses to execute orders or decisions to deal, and/or entities to which it transmits orders or decisions to deal for execution; and-is differentiated in order to reflect at least any important variation in the way that orders for different types of clients and different classes of financial instruments are executed or transmitted.
101. LB reported, that during the Review period and in recent years they have not identified any significant triggers related to the best execution requirements, they also have not received any complaints, information from other competent authorities or any alerts from other sources.

**The assessment concludes as detailed in the table hereafter:**

102. The B9, C1 deficiencies have been addressed, while B5 deficiencies remain.
103. The deficiencies are addressed through the revision of earlier supervisory processes, the introduction of a risk-based approach to supervision. Information was also provided on the different sources of information to conduct desk-based assessments. For B5, i.e. active monitoring on a desk-based basis, the deficiencies remain.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.5 - Active monitoring on a desk-based basis</b> In LT, the NCA's active desk based monitoring of best execution does not take place extensively because the CAs perform active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources.</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b> In LT, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C.1 - Compliance of execution policies with MiFID</b> In LT, the NCA has not been able to show if or how they carry out the assessment on whether firms put in place arrangements for best execution and a policy which summarises those arrangements. The NCA says it checks the policy during on-site inspections but does not provide further details.</p>	<p><b>B.5. deficiencies remain</b> LB' active monitoring still does not seem to be as extensive as demanded in the 2015 peer review.</p> <p><b>B.9. – deficiencies addressed</b></p> <p><b>C.1 – deficiencies addressed</b></p>

## 5.9 FCMC Latvia

104. The 2015 peer review report noted partial application of B “Organisation and General approach concerning the supervision of best execution” (B8, B9).

**The main points the FCMC mentioned in response to the ESMA Chair’s letter were the following:**

105. B.9 - On 08.06.2016 the FCMC adopted Manual for Supervision and Inspections of Investment Services Providers. It sets the FCMC's approach to the supervisory process of MIFID conduct of business rules based on the risk profiles of the firms, describes the methodology, steps and procedure of onsite inspections. One of the Chapters is devoted to the best execution describing the approach towards compliance with the best execution, scope of the onsite inspection, provides examples of good and bad practices applied by the market participants.

106. As regards thematic reviews the FCMC mentioned that there were no substantial improvements in this regards to report on.

**The assessment concludes as detailed in the table hereafter:**

107. The B9 deficiencies have been addressed, while the B8 deficiencies remain.

108. The deficiencies are partly addressed through the adoption of an internal manual setting out the supervisory approach for MiFID supervision, incl. best execution. No thematic work has been undertaken (B8).

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.8 - Thematic work</b></p> <p>In LV, the NCA has not been able to show that they have established an approach to determine on what topics to undertake thematic work (whether or specifically on best execution), since they appear to make use only of other monitoring tools (e.g. reviews and onsite inspections on individual firms), or carry out thematic work on a very limited basis (e.g. only when participating in conferences or hearings with firms).</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b></p> <p>LV has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p>	<p><b>B.8 – deficiencies remain</b></p> <p>FCMC reported that no substantial improvements took place with regards to thematic reviews.</p> <p><b>B.9. – deficiencies addressed</b></p>

## 5.10 MFSA Malta

109. The 2015 peer review report noted partial application of B “Organisation and General approach concerning the supervision of best execution” (B3, B4, B5, B9), C “Supervision of best execution arrangements and policies” (C4, C5, C6), D “Review of appropriate information provided to retail clients” (D3), E (E2), F (F4). It has to be noted that the MFSA Malta had been on-site visited during the review.

**The main points the MFSA mentioned in response to the ESMA Chair’s letter were the following:**

110. The MFSA has enhanced its supervisory approach in the area of best execution through on-site thematic reviews which included meetings with senior management as well as a walk-through of the best execution procedures. The firms’ internal controls on best execution were further assessed with a sample of trades executed during the preceding two months of the visit.
111. The MFSA’ Securities and Markets Supervision Unit (hereinafter, "SMS IV") carried out a series of thematic visits between January and April 2016 at nine licensed investment services firms so as to assess their implemented Best Execution policies and procedures. The thematic review consisted of a desk based review of the Best Execution policies and procedures and also on-site thematic visit in order to: - examine the policy in practice; - review a sample of trades recently executed and determine the extent to which the Best Execution policy and arrangements enable the Licence Holder to obtain the best possible results for its clients.
112. The SMSU has re-performed a sample of actual trades executed in order to confirm whether the best execution requirements were adhered to in terms of price, costs, speed, likelihood of execution and settlement, nature or any other consideration relevant to the execution of the order. In addition, the thematic review included: - a review of the compliance reports covering best execution matters, - an in-depth discussion in order to understand the selection process adopted by the firms when selecting the respective trading venues included in the execution policy; and - an assessment of the relevant importance given by firms to the best execution factors.
113. During the thematic review, SMSU also reviewed the contents of the Best Execution policy in terms of the best execution factors and if such a policy was provided to retail clients.
114. As part of the scope of the thematic visits, it was emphasised to the Compliance Officers that they should ensure compliance with the relative best execution requirements emanating from MiFID and the MiFID Implementing Directive.
115. The staff within the SMSU’s supervision team responsible for investment firms has been improved. There are two additional staff members.



116. B9 - The Best Execution checklist attached to the MFSA’s letter of 30 September 2016 represents the main internal procedure which have been used for the purposes of carrying out the best execution thematic visits.
117. B4 - The MFSA does not simply rely on the findings of the external auditors following the annual audit. The Authority has been adopting a risk based approach which incorporates a number of variables including the findings reported by the external auditor in the management letter but also other variables such as the number and type of complaints submitted by clients and which have not been successfully addressed, the financial strength and stability of the licence holder, the number of clients serviced, the category of the investment services licence held by the licence holder and the materiality of the clients’ monies held on a fiduciary basis by the licensed entity.
118. The variables on the basis of which the Risk Monitoring System is run, are updated on an annual basis in order for the MFSA to be in a position of categorising license holders according to the established risk parameters. This approach was used in order to determine the nine sampled license holders which are subject to the best execution thematic review carried out between January and April 2016.

**The assessment concludes as detailed in the table hereafter:**

119. The B3, B4, B5, B9, C4, C5, C6, D3, E2, F4 deficiencies have been addressed.
120. Considerable progress has been made. There has been internal restructuring of units, a thematic review has been undertaken on best execution, a checklist introduced for supervision of best execution, in addition the MFSA states that it updates and challenges its risk monitoring system on an annual basis.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.3 – Organisational structure, procedures and resources allowing appropriate supervision and enforcement</b>            In MT, the NCA has not been able to show that the supervision of best execution, is part of the CAs established organisational structure, procedures and resources. Other than possible review through on-site visits, there are no clear predefined procedures for the supervision of best execution and no database has been established by the CA to support its activity in this regard. Moreover, it appears that best execution is not considered as a major concern in the Maltese market and therefore it is given low priority in MFSA’s supervisory approach.</p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b>            In MT, the NCA has not been able or have been able to only show partially that they extensively apply the key issues set forth in this peer review as regards the supervisory approach. In particular, in MT, the NCA appears to mostly rely on annual external audit reviews.</p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            In MT the active desk based monitoring of best execution does not take place extensively because weaknesses are monitored mostly on the basis of external audit reports and, where available, customers’ complaints; in their desk-based</p>	<p><b>B.3 – deficiencies addressed</b></p> <p><b>B.4 – deficiencies addressed</b></p> <p><b>B.5 – deficiencies addressed</b></p>

<p>reviews the CAs appear to place excessive reliance on external sources, without carrying out sufficient own analysis.</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b> The NCA of MT has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b> <b>C.4 – Review of further documentation</b> In MT, the NCA has not been able to show whether and how it reviews any other relevant documents from firms relating to best execution, including reports by the compliance function on how the execution policy is working in practice.</p> <p><b>C.5 - Assessment of the processes</b> In MT, the NCA has not been able to show if and how they assess whether the processes used by the firms to select the venues/entities included in the “policy” (for firms transmitting client orders or decisions to deal) or execution policy (for firms that execute orders or decisions to deal) are capable of achieving compliance with their best execution obligations. The NCA reported that they do not assess this.</p> <p><b>C.6 - Review of the assessment of the execution factors</b> In MT, the NCA has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result. The NCA reported that they do not conduct this review.</p> <p><b>D.REVIEW OF APPROPRIATE INFORMATION PROVIDED TO RETAIL CLIENTS</b></p> <p><b>D.3 - Review of provision of additional information to clients</b> The NCA of MT reported that they do not review that any additional information about the execution policy of firms which execute orders or decisions to deal is disclosed to the firms’ retail clients as a matter of course or upon request.</p> <p><b>E. SUPERVISION OF ABILITY TO DEMONSTRATE ADHERENCE TO POLICY</b> <b>E.2 - Supervision of firms’ ability to obtain the best possible result on a consistent basis</b> In MT the NCA does not review that the firm is able to demonstrate that it can obtain the best possible result on a consistent basis, as long as the firm has only one execution venue listed in its execution policy for a particular type of financial instrument.</p> <p><b>F. SUPERVISION OF ABILITY TO MONITOR AND REVIEW</b> <b>F.4 - Monitoring techniques in relation to different instruments and orders type</b> In MT, the NCA indicated that they do not check whether firms’ monitoring techniques vary according to instrument type or order type.</p>	<p><b>B.9 – deficiencies addressed</b></p> <p><b>C.4 – deficiencies addressed</b></p> <p><b>C.5 – deficiencies addressed</b></p> <p><b>C.6 – deficiencies addressed</b></p> <p><b>D.3 – deficiencies addressed</b></p> <p><b>E.2 - deficiencies addressed</b></p> <p><b>F.4 - deficiencies addressed</b></p>
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## 5.11 KNF Poland

121. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B3, B4, B5, B6, B8, B9), C “Supervision of best execution arrangements and policies” (C1,C3,C4) and partial application of E (E2). It has to be noted that KNF Poland had been on-site visited during the review.

**The main points the KNF mentioned in response to the ESMA Chair’s letter were the following:**

122. The most significant regulatory measure encompasses a Regulation of the Minister of Finance of 16 December 2015 amending the regulation on the mode and conditions of conduct of investment companies, banks, which are referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (“Regulation”). Before the above mentioned amendment, the Regulation provided for an exemption according to which obligation to implement and comply with an order execution policy shall not apply to an investment firm which provides the service of execution of orders, if the investment firm executes orders only in one place of order execution. After entry into force of the above amendment the exemption was repealed. Moreover, under the amended Regulation investment firms that provided investment services.
123. In terms of regulatory measure taken by the KNF with regard to the best execution regime it is worth mentioning that on 24 May 2016 the KNF adopted the Resolution No. 352/2016 concerning adoption of Guidelines for providing brokerage services on the OTC market. The purpose of the Guidelines is to set forth the manner of implementing laws with regard to the key aspects of providing brokerage services on the OTC derivatives market by investment firms to clients including also best execution regime. The KNF decided to elaborate and publish the Guidelines due to the identified instances of misconduct in provision of investment services on the OTC derivative market also within the execution of clients’ orders. KNF expects that investment firms and other supervised entities shall implement those Guideline until the end of September 2016.
124. Example of Guideline that enhance the client best execution is Guideline 8. According to Guideline 8: The investment firm which provides the brokerage services, as referred to in Article 69(2) (2) (execution of order) of the Act on trading on financial instruments, on the OTC derivatives market to the client should, as part of its order execution policy, notify the client of a standard timeframe for executing a derivative purchase or sale order, following its registration in the investment firm's IT system, under standard market conditions. In order to implement the above Guideline, the KNF gave clear instructions to the investment firm. In Guideline 12 KNF underlined the issue of best execution stating that investment firm shall establish in a reliable, accurate and not misleading manner the rights and obligations of parties to a contract for providing brokerage services on the OTC derivatives market and shall set out the mode and conditions of their provision.

125. Information on the application of the Guidelines should be forwarded by entities to the KNF in a form of their own self-assessment of compliance with the guidelines.
126. The KNF has undertaken a number of supervisory measures in order to make sure that the MIFID provision on best execution are properly applied. Those measures are verified within on site supervision, desk based (off site supervision) as well as during the authorisation process.
127. Following the amendment of the Regulation the KNF sent a letter to supervised entities, i.e. investment firms, including foreign investment firms providing investment services within a branch on the territory of Poland informing about the regulatory amendment that entered into force and relates to best execution as well as necessity to implement the abovementioned amendments to the internal policies of investment firms. In the aforesaid letter KNF requested investment firms to provide detailed information to which extent they implement the regulatory amendment.
128. The KNF also undertook in 2015 on ongoing basis the following measures (in the form of desk based supervision): a) verification of the application of the provision of best execution, b) analysing of the best execution based on the sample of transactions being executed, c) analysing of the best execution policies and policies of the acting in the best interest of the client, d) analysing of the factors as well as method of determining relative importance of the factors to be taken by investment firms within best execution policy (i.e. category of clients, the characteristics of the clients orders, characteristics of the financial instruments that are the subject of the order).
129. The KNF confirms that verification of the best execution provisions is also part of KNF's periodic and non – routine onsite visits, depending on the risk profile of a regulated entity. Within the abovementioned measure KNF inspectors are verifying whether investment firms as well as foreign investment firms providing execution of orders and / or reception and transmission of orders implement and apply internally best execution provisions.
130. The KNF's supervisory actions are based on the following sources of information (both internal and external). Internal sources include e.g. copies of complaints, quarterly reports, information received from other Legal Department or from previous onsite inspections in relation to a given entity. External sources include e.g. information on any suspicion concerning equalised entities' misconduct gathered from external sources (including individuals or legal entities, foreign competent authorities, domestic enforcement sources), complaints received by the KNF in relation to regulated entities, or semi-annual reports from investment firms on the functioning of their compliance system.
131. B.5. Active monitoring on the desk based basis: KNF with regard to the supervision of best execution, undertakes also desk based monitoring that is based on the following measures: periodic reporting that include semi-annual reports, other reports provided by investment firm Supervisory Review and Evaluation Process that among other addresses the best execution issues. With regard to the non–routine inspection, the KNF takes into account complaints received from the client or internally from the internal sources: Legal Department, Consumer Protection Department.

132. B.8 Thematic work: With regard to thematic work, the KNF emphasises that based on the number of supervisory actions undertaken within the onsite visit as well as desk based supervision carried out in the best execution area the KNF elaborated and publicised Guidelines that address a number of supervisory concerns identified within aforesaid supervisory measures. The KNF undertakes thematic works as soon as observe that some misconducts or infringements as regards fulfilling of conduct of business including best execution across supervisory entities is getting common or is considered to particular dangerous from the perspective of the client in particular retail clients.
133. B.9 Effective supervision and testing of internal approaches and risk models: As regards the issue of the formalised internal procedure or established clear practices, the KNF states that there is no formalised an internal procedure but there exist the established clear practices including set of questions being used during the carrying out supervisory actions and being modified accordingly to new legal provisions and practices in particular in terms of best execution.
134. With regard to the aforesaid letter investment firms consulted with the KNF as regard the proper implementation of the said provision. The KNF provided detailed information upon the right implementation of the provision concerning best execution when reception and transmission of orders and execution of orders are provided by investment firms just on single execution venue. The KNF informs that all investment firms providing investment services on reception and transmission of orders and execution of orders responded to the aforesaid letter indicating the extent to which they are advanced in the process of implementation of the new Regulation.
135. C.3 - Supervision on the involvement of the firms' compliance function and approval by the board: The KNF reviews the engagement of the compliance function in the process of development, application and the review of the execution policy in the course of the onsite visit. The KNF also verifies within on-site inspection whether best execution policy was reviewed by compliance function at least on annual basis. Moreover, KNF checks whether board of investment firms as well as supervisory board are informed at least one a year on the result of the review of best execution. Once the best execution policy has been amended it is verified by KNF whether the clients are informed about the implemented amendments and the board have formally approved.
136. E.2. Supervision of firms' ability to obtain the best possible result on a consistent basis: Since the amendments into legal provision repealing the exemption on application of best execution on a single venue entered into force the KNF undertakes review in terms of the ability to obtain by the investment firms the best possible result on a consistent basis as long as the firm has only one execution venue. Significant and selected cases concerning firms' ability to obtain the best possible result on a consistent basis (for internal use only).
137. Investment firms in Poland are obliged to keep the records on every documents and activities conducted within investment services including also activities regarding reception and transmission of orders and execution of orders. The above mentioned

obligation on record keeping related also to asset managers. This requirement allows the KNF verification among other ability to fulfilment of the best execution requirements by disclosing if and how best execution has been practically carried out. The KNF can for instance require the sample of clients orders for a particular period in terms of the assessment of time of execution of clients' orders, price at which the orders were executed, use of alternative venues where the orders could be carried out.

**The assessment concludes as detailed in the table hereafter:**

- 138. The B3, B4, B5, B6, B8, B9, C1, C3, C4, E2 deficiencies have been addressed.
- 139. There have been considerable improvements, legal framework has been modified and updated, as well as guidelines developed.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.3 – Organisational structure, procedures and resources allowing appropriate supervision and enforcement</b>            The NCA has not been able to show that the supervision of best execution, is part of the CAs established organisational structure, procedures and resources: while overall the KNF appears to have organisational arrangements for supervision of conduct of business and there are formal lines of communications between departments, it is not clear from the assessment how frequently this organisational structure is used in relation to best execution.</p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b>            In PL, the NCA has not been able or have been able to only show partially that they extensively apply the key issues set forth in this peer review as regards the supervisory approach. The KNF stated that they employ all the aforementioned factors, but have not provided sufficient evidence or explanations in this respect. The KNF does not appear to make use of indicators from the review of information and data transmitted by investment firms, nor of the regular review of audit reports (factor under (iii) above).            In PL, the supervisory approach of the CA is clearly influenced by the legal regime applicable in this jurisdiction, which provides for a legal exemption to implement best execution for firms receiving and transmitting orders and directly executing these orders in one place of order execution.</p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            In PL active desk-based monitoring of best execution does not take place extensively because the CAs desk based reviews do not include any of the sources of information listed in the key issue relating to active desk based monitoring.</p> <p><b>B.6 - Periodic and non-routine onsite inspections</b>            In one PL the CA has not developed any criteria for prioritizing onsite inspections</p> <p><b>B.8 - Thematic work</b>            In PL, the NCA has not been able to show that they have established an approach to determine on what topics to undertake thematic work (whether or specifically on best execution), since they appear to make use only of other monitoring tools (e.g. reviews and onsite inspections on individual firms), or carry out thematic work on a very limited basis (e.g. only when participating in conferences or hearings with firms).</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b>            In PL, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p>	<p><b>B.3 – deficiencies addressed</b></p> <p><b>B.4 – deficiencies addressed</b></p> <p><b>B.5 – deficiencies addressed</b></p> <p><b>B.6 – deficiencies addressed</b></p> <p><b>B.8 – deficiencies addressed</b></p> <p><b>B.9 – deficiencies addressed</b></p>

<b>C. SUPERVISION OF BEST EXECUTION ARRANGEMENTS AND POLICIES</b>	
<p><b>C.1 - Compliance of execution policies with MiFID</b> In PL, the NCA has not been able to show if or how they carry out the assessment on whether firms put in place arrangements for best execution and a policy which summarises those arrangements. The NCA takes into account that most of the investment firms execute orders on the regulated market of the Polish Stock Exchange GPW. So, according to this CA, the rules of best execution lose de facto their meaning.</p>	<b>C.1 – deficiencies addressed</b>
<p><b>C.3 - Supervision on the involvement of the firms’ compliance function and approval by the board</b> In PL, the NCA has not been able to show how they review that the compliance- function is appropriately involved in the development, application and review of the execution policy and that the execution policy is approved by the board/senior management. The NCA does not show how the approval of the best execution policy by the board/senior management is reviewed.</p>	<b>C.3 – deficiencies addressed</b>
<p><b>C.4 - Review of further documentation</b> In PL, the NCA does not perform any review of any other relevant documents from firms relating to executing, or transmitting orders or decisions to deal; in addition to the information contained in the policy. Neither does the CA review reports by the compliance function on how the execution policy is working in practice.</p>	<b>C.4 – deficiencies addressed</b>
<b>E. SUPERVISION OF ABILITY TO DEMONSTRATE ADHERENCE TO POLICY</b>	
<p><b>E.2 - Supervision of firms’ ability to obtain the best possible result on a consistent basis</b> In PL the NCA does not review that the firm is able to demonstrate that it can obtain the best possible result on a consistent basis, as long as the firm has only one execution venue listed in its execution policy for a particular type of financial instrument.</p>	<b>E.2 - deficiencies addressed</b>

## 5.12 FSA Romania

140. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B4, B5, B9) and partial application of D “Review of appropriate information provided to retail clients” (D3).

**The main points the FSA mentioned in response to the ESMA Chair’s letter were the following:**

141. Early 2016, internal organization was changed and currently the Supervision and Control Directorate has a structure that deals more consistently with the off-site and on-site supervision, both from the business conduct and prudential perspective. Given the fact that the responsibility for the off-site supervision of business conduct, including the best execution, lays with one of the units within this directorate, specific actions were undertaken by FSA in order to strengthen its competences in this area.
142. B.4 - These actions are aiming to ensure the early identification of vulnerabilities and the development of adequate plans to remedy these vulnerabilities; to identify new indicators for determining the risk categories in which the entities are included (by also taking into consideration the type of financial instruments) and to ensure an increased supervision of the entities according to each category of risk to further analyse and verify the relevant issues arising from the reports drafted by the auditors; to analyse the potential conflicts of interests between the clients and the firms’ representatives to verify the activity

performed by the investment firms on the territory of other Member States, based on freedom to provide services.

143. B.5 - All these measures have addressed the issue of a more active approach of the business conduct supervision from off-site. In the same time, within the new architectural institutional framework of FSA, the cooperation between off-site and on-site units has been significantly increased, on a day by day basis.
144. Therefore, FSA will benefit from the European Commission and World Bank support within a technical assistance program which will allow implementation of the best supervisory practices in the business conduct area. One objective of this project is to have in place a framework that will support the authority in identifying the key areas of risk, in prioritizing the firms and/or topics for further monitoring and in achieving the best balance between the off-site versus on-site supervision of conduct issues (including best execution).

**The assessment concludes as detailed in the table hereafter:**

145. The B4, B5 deficiencies have been addressed, while B9, D3 deficiencies remain.
146. While it is worth noting the enhancement of risk-based supervision and the changes made in the organisational structure, the response provided by the Romanian FSA does not always address the specific points raised in the 2015 peer review. The B4, B5 deficiencies have been addressed. For B9, D3 the deficiencies remain, i.e. there is no evidence of formalised internal procedure or established clear practices for supervision of best execution, or of review of provision of additional information to clients.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.4 – Clear supervisory approach and relevant criteria</b> In RO, the NCA has not been able or have been able to only show partially that they extensively apply the key issues set forth in this peer review as regards the supervisory approach. In particular, in RO, the NCA does not appear to make use of the “type of product” (factor under (v) above).</p> <p><b>B.5 - Active monitoring on a desk-based basis</b> In RO, the NCA’s, active desk based monitoring of best execution does not take place extensively because the CAs desk based reviews do not include periodic reporting by firms or independent auditors. The desk based reviews do not include information from other competent authorities, where available. The NCA performs active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources.</p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b> In RO, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID</p>	<p><b>B.4 – deficiencies addressed</b></p> <p><b>B.5 – deficiencies addressed</b></p> <p><b>B.9. – deficiencies remain</b> FSA’s response does not contain clear</p>



<p>conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p> <p><b>D. REVIEW OF APPROPRIATE INFORMATION PROVIDED TO RETAIL CLIENTS</b></p> <p><b>D.3 - Review of provision of additional information to clients</b></p> <p>In RO, the NCA reported that they do not review that any additional information about the execution policy of firms which execute orders or decisions to deal is disclosed to the firms' retail clients as a matter of course or upon request.</p>	<p>evidence that internal procedures have been improved.</p> <p><b>D.3 – deficiencies remain</b></p> <p>The FSA's response does not address this question.</p>
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## 5.13 Finansinspektionen Sweden

147. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B5), D “Review of appropriate information provided to retail clients” (D1, D2, D3, D4), E “Supervision of ability to demonstrate adherence to policy” (E1, E2), F “Supervision of ability to monitor and review” (F1, F2, F3, F4) and partial application of C “Supervision of best execution arrangements and policies” (C5, C6).
148. The main points the Finansinspektionen mentioned in response to the ESMA Chair's letter were the following:
149. Supervision of best execution is part of the conduct supervision. The situation described in the questionnaire on best execution under MiFID still applies. Finansinspektionen has identified greater risks in other areas and thus prioritised these over best execution practices. The main reasons are the low number of complaints regarding best execution and local market specificities.
150. All supervisory activity requires prioritisation. Working with a risk based methodology means that higher priority is given to areas where greater risk has been identified. Through processes risks related to best execution have been assessed.
151. Concerning the first finding, this has been addressed through a re-organisation of the supervision of investment firms and investment services, including conduct supervision. As of 1 April 2014 a new supervisory area was established, Consumer Protection. The two divisions previously responsible for supervising investment firms and conduct supervision respectively were included in the new supervisory area, thus creating one division with a clear responsibility to supervise internal governance as well as conduct supervision of investment firms. The division is also responsible for conduct supervision in banks. The new organization has facilitated a more effective and in-depth supervision.
152. During the period after the review period, 1 January 2013-30 June 2016, Finansinspektionen conducted 36 investigations on the compliance of different subjects of MiFID, both in investment firms and in banks. The investigations carried out concerned areas which, according to Finansinspektionen's risk identification process posed a higher

risk for retail clients or the financial stability. Examples of the areas covered are: investment advice regarding complex products, outsourcing of risk and compliance functions, segregation of client’s assets, conflicts of interests in investment advice, internal governance with focus on risk and compliance functions, discretionary portfolio management with focus on information to clients on cost and charges

153. There is still only one main trading venue for each financial instrument and there are no authorized systemic internalisers (SI). Retail customers frequently trade using direct market access (DMA) services, enabling them to follow the order in real time. Since 2013 neither market conditions, trading patterns nor market infrastructure have motivated a different approach to the supervision of best execution. Finansinspektionen emphasizes that all areas of MiFID are part of the annual risk assessment. If there are changes in the above, complaints or market specificities, this would affect the assessment of best execution and whether it would be a prioritized risk.
154. Although best execution has not been subject to targeted supervisory activities it is not left unattended since best execution practices are scrutinized during the authorization process of an investment firm. As part of the authorisation process the firm must provide Finansinspektionen with information on how best execution for clients will be achieved. The information is usually provided by submitting the instructions and guidelines concerning best execution. This enables Finansinspektionen to ensure that the best execution rules are applied correctly from start.

**The assessment concludes as detailed in the table hereafter:**

155. The B5 deficiencies have been partly addressed, while the C5, C6, D1, D2, D3, D4, E1, E2, F1, F2, F3, F4 – deficiencies remain.
156. While organisational changes have taken place, and a high number of on-site inspections on MiFID issues (where best execution was not identified as area with risks), the response provided by Finansinspektionen does not provide information on the specific points raised during the peer review.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.5 - Active monitoring on a desk-based basis</b>            In SE, the NCA’s active desk based monitoring of best execution does not take place extensively because the CAs desk based reviews do not include any of the sources of information listed in the key issue relating to active desk based monitoring.</p> <p><b>C.5 - Assessment of the processes</b>            In SE, the NCA has not been able to show if and how they assess whether the processes used by the firms to select the venues/entities included in the “policy” (for firms transmitting client orders or decisions to deal) or execution policy (for firms that execute) are capable of achieving compliance with their best execution obligations: the NCA SE reported that they do not;</p>	<p><b>B.5 – deficiencies partly addressed</b>            During an investigation compliance and risk reports are frequently reviewed.</p> <p><b>C.5 – deficiencies remain</b>            The response does not cover whether and how this issue has been dealt with.</p>

<p><b>C.6 - Review of the assessment of the execution factors</b>          In SE, the NCA has not been able to show if and how they review how the firms assess the relative importance of the best execution factors in order to obtain the best possible result: the NCA of SE mainly reviews the relative importance of the best execution factors in the authorisation process. The NCA of SE considers it to be in line with the risk based approach.</p> <p><b>D. REVIEW OF APPROPRIATE INFORMATION PROVIDED TO RETAIL CLIENTS</b></p> <p><b>D.1 and D.2 - Review of appropriate information to retail clients</b>          The NCA of SE reported that they do not review that firms provide appropriate information to retail clients to enable an adequate understanding about the key aspects of the firms' execution policy (for firms that execute orders or decisions to deal on behalf of client portfolios) or policy (for firms that transmit orders or decision to deal) and that this information is in fact disclosed.</p> <p><b>D.3 - Review of provision of additional information to clients</b>          The NCA of SE reported that they do not review that any additional information about the execution policy of firms which execute orders or decisions to deal is disclosed to the firms' retail clients as a matter of course or upon request.</p> <p><b>D.4 - Review of appropriate arrangements and procedures to collect clients' consent.</b>          The NCA of SE reported that they do not consider whether firms have set up appropriate arrangements and procedures (or other measures) to collect clients' consent.</p> <p><b>E. SUPERVISION OF ABILITY TO DEMONSTRATE ADHERENCE TO POLICY</b></p> <p><b>E.1 - Supervision of firms' ability to demonstrate adherence to policy</b>          In SE, the NCA reported that they do not review firms' procedures and arrangements for demonstrating, at a client's request, that they have executed any individual order or decision to deal in compliance with their execution policy.          In SE, the CA considers that the lack of supervision on this topic is consistent with their risk based supervision.</p> <p><b>E.2 - Supervision of firms' ability to obtain the best possible result on a consistent basis</b>          In SE the NCA does not review that the firm is able to demonstrate that it can obtain the best possible result on a consistent basis, as long as the firm has only one execution venue listed in its execution policy for a particular type of financial instrument.</p> <p><b>F. SUPERVISION OF ABILITY TO MONITOR AND REVIEW</b></p> <p><b>F.1, F.2 and F3 - Supervision of firms' regular monitoring and reviews of their policy and arrangements</b>          In SE, the NCA indicated that they do not assess whether firms have put in place appropriate processes: (i) for monitoring, on a regular basis, the effectiveness of their best execution arrangements and policies; (ii) for reviewing their policies and arrangements on a regular basis; (iii) for reviewing their policies and arrangements in light of a material change that affects the firms' ability to achieve the best possible result on a consistent basis.</p> <p><b>F.4 - Monitoring techniques in relation to different instruments and orders type</b></p>	<p><b>C.6 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>D.1 and D.2 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>D.3 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>D.4 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>E.1 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>E.2 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>F.1, F.2 and F3 – deficiencies remain</b>          The response does not cover whether and how this issue has been dealt with.</p> <p><b>F.4 – deficiencies remain</b>          The response does not cover whether and how</p>
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In SE, the NCA indicated that they do not check whether firms' monitoring techniques vary according to instrument type or order type.	this issue has been dealt with.
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## 5.14 SMA Slovenia

157. The 2015 peer review report noted partial application of B “Organisation and General approach concerning the supervision of best execution” (B9).

**The main points the SMA mentioned in response to the ESMA Chair’s letter were the following:**

158. The Agency acknowledges that there have been no specific changes in the organization and approach concerning the supervision of best execution provisions.

159. The Agency is one of the smallest CAs in terms of size of capital market, liquidity on the market, number of investment firms operating on the market (17 as of 30 September 2016 out of which there are 4 investment firms, 10 credit institutions and 3 management companies authorized to provide investment services and activities under UCITS Directive) and the nature of services provided to clients; -The size of the CA is of great relevance also as regards number of staff in particular number of persons conducting supervision, both off and on-site (total 6 persons who are, beside the mentioned supervision also involved in other activities, all related to and important for conducting market supervision and functioning of market infrastructure); -Supervisory experts have to cover supervision over the whole spectrum of licensed intermediaries on the market, not only in accordance with MiFID and MAD/MAR provisions, also in the area of investment and alternative investment funds as well as mutual pensions funds;-Agency performs risk based supervision in order to respond to conditions as well as changes on the market; -The same as in time of responding to the questionnaire there are no clients’ complaints regarding irregularities of performing best execution, which is one of the reasons the Agency incorporates supervision of best execution into its regular general supervisory activities as opposed to special supervision and thematic reviews; -Please note that execution policy of investment firms is a part of their general rules and procedures that should always be presented to clients when providing investment services. The rules defining execution policy, choices of trading venues for execution and others have to be reviewed once a year and publicly disclosed by each of the institutions (usually via their web pages) and sent (including when changed) to their clients.

**The assessment concludes as detailed in the table hereafter:**

160. The B9 – deficiencies remain.

161. The 2015 peer review found one deficiency, that was of partial application. On this point, there has not been any developments.

<b>Findings 2015 Peer Review Report</b>	<b>Findings Follow-up</b>
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<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.9 - Effective supervision and testing of internal approaches and risk models</b></p> <p>In SI, the NCA has not formalised an internal procedure or established clear practices whereby they are able to verify their approaches to supervising MiFID conduct of business provisions, including best execution, and to test, where risk models are used, these appropriately.</p>	<p><b>B.9 – deficiencies remain</b></p> <p>The peer review found one deficiency, that was of partial application. On this point, there has not been any developments.</p>
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## 5.15 NBS Slovakia

162. The 2015 peer review report noted insufficient application of B “Organisation and General approach concerning the supervision of best execution” (B5).

**The main points the NBS mentioned in response to the ESMA Chair’s letter were the following:**

163. The NBS performs its duties as an integrated financial supervisory authority and applies a risk-based approach in order to accurately allocate its resources. In this respect, NBS emphasizes that only 15 investment firms and 9 credit institutions are currently subject to the best execution rule under MiFID in its jurisdiction. Generally, investment firms execute a very limited amount of client orders (in total only a few executed orders per year) and some of them execute these orders only in units of collective investment funds and bonds, which were not admitted to trading on regulated market. Bearing in mind the limited scale of investment firm’s activities, NBS monitors compliance with best execution requirements by collecting data from supervised entities on periodic basis and is undertaking a pro-active approach in this area during the on-site inspections. The NBS strongly believes that this approach is satisfactory in order to properly supervise best execution requirements. Onsite inspections took place, covering assessment of compliance with best execution. The NBS has not detected any insufficiencies in this area since the 2015 peer review report was published.

**The assessment concludes as detailed in the table hereafter:**

164. The B5 deficiencies remain.

165. The peer review found one deficiency, that was of insufficient application. On this point, there has not been any developments. NBS assesses compliance with best execution through onsite inspections.

Findings 2015 Peer Review Report	Findings Follow-up
<p><b>B. ORGANISATION AND GENERAL APPROACH CONCERNING THE SUPERVISION OF BEST EXECUTION</b></p> <p><b>B.5 - Active monitoring on a desk-based basis</b></p>	<p><b>B.5 – deficiencies remain</b></p>

<p>In SK, the NCA's, active desk based monitoring of best execution does not take place extensively because the CAs desk based reviews do not include periodic reporting by firms or independent auditors. The NCAs desk based reviews do not include information from other competent authorities, where available. The NCA performs active desk based reviews only on a very limited basis and mostly in connection with on-site inspections or limited information has been provided on the various desk-based information sources.</p>	<p>The peer review found one deficiency, that was of insufficient application. On this point, there has not been any developments.</p>
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## **6 Annex – Statements from National Competent Authorities**

166. Two NCAs wished to make statements to the follow-up assessment to the peer review on best execution.

### **6.1. Finansinspektionen Sweden**

167. Finansinspektionen takes note of the assessment made by ESMA in the follow up to the peer review on Best execution. Although we support ESMA's work on supervisory convergence we would like to make the following comments to the assessment.

168. Neither during the original review period, nor during the follow-up period have we identified best execution as an area requiring additional supervisory focus. The reasons for this risk-based assessment have already been given. We have not received any indication that this assessment has been wrong. Accordingly, we consider that our current processes are satisfactory and that they in a proportionate manner are adapted to the requirements governing best execution. Should we e.g. see changes in market conditions, trading patterns or market infrastructure or receive indications of problems we would analyse the effect of this on best execution and if necessary act on it. Our risk-based supervisory approach sets the direction of overall supervisory work and allows us to focus our resources to the areas where we have identified the greatest risk for consumers and financial stability. Complementing the risk-based supervision our supervision is comprehensive and event-driven, i.e. we aim to cover all entities under supervision on a regular basis and we react to events.

### **6.2. NBS Slovakia**

169. NBS performs its duties as an integrated financial supervisory authority and applies a risk-based supervisory approach in order to accurately allocate its resources. In practice, it means that NBS is responsible for the supervision of all financial market participants including banks, insurance companies, investment firms, asset managements, financial intermediaries, pension funds and other entities. In relation to the best execution requirements, NBS would like to emphasize that only 15 investment firms and 9 credit institutions are currently subject to these rules. Generally, investment firms and credit institutions execute a very limited amount of client orders. The vast majority of executed orders consist of units of collective investment funds and bonds, which were not admitted to trading on regulated market. It is worth mentioning that in case of units of collective investment funds the execution channel is always direct subscription or redemption with the relevant asset management company and these orders are not executed in another trading venue. Bearing in mind very limited scale of investment firms and credit institutions activities, NBS monitors and reviews compliance with best execution requirements by collecting data from supervised entities on periodic basis and is undertaking a pro-active approach in this area during the on-site inspections. NBS strongly believes that this approach is satisfactory, proportionate and appropriate in order to properly supervise best execution requirements. NBS would also like to highlight that no deficiencies have been detected in this area since the 2015 peer review report was



published even though best execution requirements were comprehensively examined during on-site inspections in several investment firms in this period.