European Securities and Markets Authority
201-203 rue de Bercy
75012 Paris
France

16 October 2024

Consultation Paper re: Technical standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies

Dear Sir/Madam.

The following correspondence is a response to the European Securities and Markets Authority ("ESMA") Consultation Paper ("CP") regarding the effectiveness of investment firms' order execution policies.

We are supportive of ESMA's effort to fulfill the requirements of the MiFID review, and believe that transparency around order execution policies is an important mechanism for ensuring firms are achieving beneficial outcomes for customers.

As the CP addresses a multitude of issues, we have limited our response to the items for which we wish to provide feedback on, rather than the CP in its entirety.

Question 1: *Do you agree with the proposed categorisation of classes of financial instruments? And could the methodology based on, inter alia, the classification of financial instruments in the MiFID II RTSs 1 and 2 be used in the context of MiFID II transparency reporting be an alternative? Please state the reasons for your answers.*

We agree that in their order execution policies, investment firms should distinguish between the various classes of financial instruments in which they transact on behalf of customers. In addition, we also recommend that within applicable asset classes, investment firms should be required to consider similar products when executing business in instruments on underlying assets on behalf of their customers.

We also strongly believe that when an investment firm is transacting in single stock options ("SSO") on behalf of customers, those firms should be required to consider similar products on the same underlying share on alternative execution venues. For example, the ISIN code for Heineken stock is NL0000009165, and SSO on NL0000009165 are available on multiple exchanges. Although the SSO contracts are not entirely fungible (e.g., clear at different central counterparties ("CCPs")), they are almost identical and should be considered so for the purposes of best execution analysis.

By extension of this logic we also believe that warrants on the same underlying share should also be considered when investment firms are executing business in SSO on behalf of customers, as warrants and options are similar products in that each gives the buyer of the warrant/option the right, but not the obligation, to buy/sell the underlying stock at a future date.

It has been well documented that the execution quality in warrants is often inferior to SSOs, and this is clearly evidenced in the FIA EPTA paper of November 2020 entitled: "*Higher Cost, higher risk. The impact of the closed market structure on the European warrants market*". Thus, in order to achieve better outcomes for investors, we believe that warrants and options on the same underlying stock should be considered for purposes of providing best execution to customers.

Beyond this consultation, in the interest of providing better execution quality to end investors over the long term, it is our opinion that policy makers should consider whether SSOs should be made entirely fungible across exchanges and CCPs. This would be an important step toward integrating European markets in furtherance of the CMU agenda.

In the meantime, we believe grouping similar products together for purposes of best execution analysis as described above would meaningfully improve investor outcomes over time.

Question 6: Concerning the specific client instruction, should it be possible for an investment firm to pre-select an execution venue in the order screen, where the firm invites its clients to choose an executing venue out of multiple options? And if so, do you agree that only if the client chooses a different venue than the one pre-selected by the firm, the choice of execution venue does constitute a specific instruction? Please also state the reasons for your answer.

Regarding the ability to default to a pre-selected venue, we would support this proposal subject to additional transparency on the factors and supporting metrics that the firm considered in defaulting to the venue in question. In the interest of providing end investors with the highest quality of execution performance, we would expect such metrics to include, but not be limited to, price, cost, speed and likelihood of execution.

We are also supportive of giving clients, particularly retail clients, the ability to pre-select a particular execution venue.

Should you have any further questions regarding any of the content of this letter, please do not hesitate in contacting me.

Yours sincerely,

Nick Dutton
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Cboe Global Markets