



EACB comments on the discussion paper of the European Commission for the MiFID workshop on “best execution”

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The voice of 4.200 local and retail banks, 50 million members, 160 million customers

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General Remarks:

We noticed that during the workshop on 22 January 2010 reference was made to possible standardized disclosure information for best execution that should be made available by intermediaries to clients and that the Commission drew a parallel to the Key Information Document (KID) for UCITS. We would like to emphasize that already today the clients have to be informed about the execution policy of the investment firm. As we do not have information about drawbacks in the every day business on this matter we do not see any reason for introducing further information obligation. The provision of redundant information has to be avoided. We therefore strongly object the introduction of any kind of KID for best execution.

Questions

1. Experience from the application of best execution obligations

1.2 Do you believe that sufficient information is available to assess the quality of execution of various execution venues? Do you believe that improvements in the quality and accessibility of pre- and post-trade transparency data may have positive effects on compliance with best execution obligations? Please explain and differentiate between pre- and post-trade data.

Yes, we believe that sufficient information is available that enables market participants to assess the quality of execution venues. From our experience market participants base their assessment on available information about the execution costs (pre-trade). In addition they make use of external data on quotes and tariffs that is provided directly by the execution venues upon request (post-trade).

We would like to emphasize that the methodology execution venues use when providing the data for market participants is not standardized. For instance some execution venues provide "non-binding" quotes ("tariffs"). Others provide binding ones. From our perspective it would make sense to implement identical requirements for quote/tariff disclosures for all execution venues in Europe.

1.3 Do you think execution fees diminished, in general or for some classes of instruments, since the implementation of MiFID? If yes, are clients on behalf of whom orders are executed gaining from this decrease?

Following the entry into force of MiFID our member institutions observed an increase of competition between execution venues. Especially the establishment of the new MTFs has fostered this development. The result of this competition was a decrease in trading costs across all asset classes to the benefit of the clients. On the other hand, however, our members also experienced an increase of costs for settlement services, market data and technology developments.



1.4 Has the option of asking firms to demonstrate compliance with their execution policy been often exercised by retail clients? If yes, please explain any difficulties encountered by firms in showing compliance. If not, please explain the possible reasons.

No, the option has not been exercised often. Our member institutions report of only little demand from retail clients for additional information. The clients can request at any time further information from the market participants about the order execution based on the best execution policy. We have no information about any difficulties on this matter.

1.5 Do you think that specific instructions from clients have been largely used? If yes, do you think specific instructions are being used to alleviate firms' obligations?

Yes, the majority of orders are explicitly instructed by clients. We would like to point out that we do not have any indication that the number of clients making use of their right to give specific instructions would mean that specific instructions would be used to alleviate firms' obligations. From our experience this is clearly not the case

2. Intermediaries providing the service of execution of orders on behalf of clients

2.1 Do you think that the criteria and the factors to take into account in complying with best execution obligations are efficient? In particular, do you agree that price and costs are the most appropriate factors to be considered in the case of retail clients, while a wider number of factors are appropriate in executing professional clients' orders?

Yes, we think that the criteria and the factors that have to be taken into consideration in complying with the best execution obligations are efficient. They cover a wide range of factors including amongst others:

- Price
- Costs
- Speed
- Likelihood of execution
- Order processing
- Order type

In the case of retail clients we absolutely agree that price and costs are the most appropriate factors to be taken into account. Especially in the extreme regimes, however, it has to be considered that the price-factor is influenced by other factors as well (e.g. execution probability) which are therefore reflected implicitly. Data on price and cost ensure neutral comparison and can be gathered easily. In contrast to many professional clients – that have own technical means at their disposal to compare prices and costs – only a minority of retail clients have a full market transparency. For retail clients the support by a best execution policy that is geared to the total costs of the order is



absolutely crucial. As professional clients – by definition – are clients who possess the necessary experience, knowledge and expertise to make their own investment decisions, they should therefore be able to make a proper risk assessment by their own.

2.2 Do you believe that best execution principles should also apply to transactions between firms and eligible counterparties or is the current regime where eligible counterparties may opt in to best execution adequate?

The current regime applied to clients that require a high level of protection is absolutely appropriate. The situation differs for professional clients and eligible counterparties who generally have a higher level of expertise and knowledge. In addition they have very often individual requirements for bespoke solutions that cannot be generalised or standardized. Professional clients and eligible counterparties have in any case the possibility to opt in a higher level of protection if requested. In practise this works very well and is very adequate.

2.3 Do you believe that information provided to clients in the context of best execution obligations is sufficient and useful?

Yes, we absolutely believe that the information provided to clients in this respect is useful and sufficient. It is very important that the amount of information provided to the clients is proportionate which is fulfilled through the MiFID implementation in many European countries. We would like to point out that excessive information will burden both the clients and the investment firms in a negative way and the provided information will not be useful any more. In any case, material changes are disclosed to the client immediately.

2.4 Do investment firms which cross orders internally adequately account for this in their execution policy?

We have no comment to this question.

2.5 Do you think that there are issues other than the ones mentioned above with the definition of MiFID best execution obligations for intermediaries executing clients' orders?

No, we do not think so.

3. Intermediaries providing the service of portfolio management and reception and transmission of orders

3.1 Should intermediaries providing portfolio management and reception and transmission of orders be legally empowered to obtain more detailed information about the execution policy adopted by the entities they select and about the actual execution of the orders?

No, this should not be the case.



3.2 Should intermediaries providing these services be required to demonstrate to their clients, upon request, compliance with their policy?

Already now this is covered by Art. 21 (5) of the MiFID: "Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy."

3.3 Is information provided to clients for reception and transmission of orders and portfolio management comparable to the one provided for the execution of orders? Should the MiFID further specify information requirements for retail and professional clients?

No.

3.4 Do you think that there are issues other than the ones mentioned above with the definition of MiFID best execution obligations for intermediaries providing the services of portfolio management and reception and transmission of orders?

No.

4. Additional issues concerning financial instruments other than shares

4.1 Do you see specific issues in the case of orders involving financial instruments other than shares? Please distinguish between products (e.g. corporate bonds and derivatives) and client categories (retail and professional clients).

No, our member institutions have not observed any significant differences for classes of financial instruments other than shares.

5. Definition of best execution

Several stakeholders have raised issues about the definition of best execution. Some for instance are stating that the definition of best execution would be too vague to allow a proper implementation. Is there in your views an issue with the definition of best execution in the MiFID? If yes, please specify what you consider the issue to be? Could you suggest ways to improve it? Please detail your answers?

We do not consider the definition of best execution as being too vague.

Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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