BEST EXECUTION

BACKGROUND

Best execution obligations are central to the MiFID and apply to all financial instruments. They aim both at investor protection and market efficiency. When executing client orders, investment firms are required to take all reasonable steps to obtain the best possible result for them taking into account a variety of factors such as price, cost, speed of execution, likelihood of execution. The relative importance of factors is to be determined by firms in their execution policy according to criteria which include the categorisation of the client. In the case of retail clients only the price of the financial instruments and the costs directly related to execution are relevant. Best execution requirements do not apply in the case of transactions between eligible counterparties.

Firms must put in place arrangements for best execution purposes and a policy which summarises those arrangements. The execution policy should at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client order. Firms are required to disclose appropriate information to clients about their execution policies and should be able to demonstrate adherence with them. They should monitor on a regular basis the effectiveness of their policy and correct any deficiencies and should review their policy at least annually and whenever needed. Principles similar to the ones summarised above also apply to firms providing the service of portfolio management and reception and transmission of orders whenever they place orders resulting from their investment decisions or transmit clients' orders for execution to other entities.

Some stakeholders are questioning the actual compliance with best execution requirements. Execution policies they say are often only a copy-and-paste from the regulatory framework. Policies take a formalistic approach and do not include meaningful information for clients about how their orders are in fact executed. They may not be sufficiently differentiated (for instance, with regard to different classes of instruments or different categories of clients). Execution venues included in execution policies are often too few (one venue) and this affects the actual execution of the order. Portfolio managers argue they are sometimes unable to verify whether best execution is provided by the brokers they choose. These potential problems could be caused by a number of factors: unavailability of reliable and timely post trade information because of market data fragmentation, a formalistic approach by firms to best execution, wrong application or technical complexity of the rules.

To our view many of the issues mentioned above are related to inconsistent application of MiFID rules by certain market operatos and, to a certain extent, inefficient supervision; nevertheless there may be still potential to improve the MiFID regulatory framework on best execution. Discussion should firstly focus on possible deficiencies of the current regulatory framework.

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.

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?

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.

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?

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?

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?

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

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

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?

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?

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

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?

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).

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?