

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 5

Best execution

Article 44

(Articles 21(1) and 19(1) of Directive 2004/39/EC) Best execution criteria

1 Member States shall ensure that, when executing client orders, investment firms take into account the following criteria for determining the relative importance of the factors referred to in Article 21(1) of Directive 2004/39/EC:

- a the characteristics of the client including the categorisation of the client as retail or professional;
- b the characteristics of the client order;
- c the characteristics of financial instruments that are the subject of that order;
- d the characteristics of the execution venues to which that order can be directed.

For the purposes of this Article and Article 46, ‘execution venue’ means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

2 An investment firm satisfies its obligation under Article 21(1) of Directive 2004/39/EC to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

3 Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best execution where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

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IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

4 Member States shall require that investment firms do not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

5 Before 1 November 2008 the Commission shall present a report to the European Parliament and to the Council on the availability, comparability and consolidation of information concerning the quality of execution of various execution venues.

Article 45

(Article 19(1) of Directive 2004/39/EC) Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client

1 Member States shall require investment firms, when providing the service of portfolio management, to comply with the obligation under Article 19(1) of Directive 2004/39/EC to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

2 Member States shall require investment firms, when providing the service of reception and transmission of orders, to comply with the obligation under Article 19(1) of Directive 2004/39/EC to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

3 Member States shall ensure that, in order to comply with paragraphs 1 or 2, investment firms take the actions mentioned in paragraphs 4 to 6.

4 Investment firms shall take all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in Article 21(1) of Directive 2004/39/EC. The relative importance of these factors shall be determined by reference to the criteria set out in Article 44(1) and, for retail clients, to the requirement under Article 44(3).

An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

5 Investment firms shall establish and implement a policy to enable them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified must have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity for execution.

Investment firms shall provide appropriate information to their clients on the policy established in accordance with this paragraph.

6 Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, investment firms shall review the policy annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

7 This Article shall not apply when the investment firm that provides the service of portfolio management and/or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases Article 21 of Directive 2004/39/EC applies.

Article 46

(Article 21(3) and (4) of Directive 2004/39/EC) Execution policy

1 Member States shall ensure that investment firms review annually the execution policy established pursuant to Article 21(2) of Directive 2004/39/EC, as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy.

2 Investment firms shall provide retail clients with the following details on their execution policy in good time prior to the provision of the service:

- a an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 44(1), to the factors referred to in Article 21(1) of Directive 2004/39/EC, or the process by which the firm determines the relative importance of those factors;
- b a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;
- c a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.