



News Release

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ICMA, ISDA and TBMA Jointly Respond to FSA Discussion Paper on Implementing MiFID's Best Execution Requirements



London – The International Capital Market Association (ICMA), the International Swaps and Derivatives Association (ISDA) and The Bond Market Association (TBMA), today submitted a joint response to the Financial Services Authority (FSA) Discussion Paper, *Implementing MiFID's best execution requirements* (DP 06/03).

The Associations welcome the FSA's decision to issue a Discussion Paper to encourage debate before formally consulting later in the year on its implementation of the MiFID provisions on best execution. They also welcome the general approach set out in Chapter 2 of the Paper, treating best execution as a process and proposing flexibility for firms to decide how best to satisfy MiFID requirements.

The Associations are, however, concerned that the proposal on benchmarking in Chapter 3 is inconsistent with the flexibility of approach in the rest of the Discussion Paper. Benchmarking should not be the only or main means by which fixed income and derivatives dealers can demonstrate best execution when they execute client orders. The Associations are keen to work with FSA to ensure that the application of best execution to dealers is fully consistent with FSA's general approach.

The Associations argue that there are no robust benchmarks for most fixed income products, and that benchmarking is incompatible with OTC derivatives and structured products. In the limited areas where benchmarking would in theory be feasible, prices are already visible to most dealers and professional investors. Imposing bench-

marking would be expensive to implement in practice and could potentially lead to withdrawal of liquidity.

The Associations propose a readily available alternative to benchmarking in dealer markets: namely a principles-based approach based on “intelligent copy-out” of the MiFID provisions on best execution, supplemented by MiFID Connect industry guidance. This would recognise that execution quality depends on other factors in addition to price, that the relative importance of these factors varies between clients, and that firms have some flexibility in determining their order execution policy.

The Associations also suggest the FSA adopt a practical interpretation of the important question of what constitutes the execution of a client order in dealer markets, since this determines when the best execution obligation and therefore the benchmark proposal may apply.

“At the end of this process we hope that FSA’s approach to implementing MiFID provisions on best execution will be consistent with their commitment to principles-based regulation” said Richard Britton, Consultant on International Regulatory Matters, ICMA.

“We hope to work with FSA towards a best execution treatment that is fully compatible with all dealer markets, including OTC derivatives and structured products,” said Richard Metcalfe, Senior Policy Director, ISDA. “We consider that benchmarking does not achieve this objective.”

“FSA needs to recognise that there is no such thing as continuously executable price available from a predominant source of liquidity in dealer markets,” said Bertrand Huet, European Legal and Regulatory Counsel, TBMA. “Its approach needs to be mindful of current market structure, promote the competitiveness of EU financial markets and ensure that information remains available to wholesale and retail investors”.

The International Capital Market Association (ICMA) is the organisation representing the financial institutions active in the international capital market worldwide. ICMA's members are located in some 50 countries across the globe, including all the world's main financial centres, and currently number over 400 firms. For further information please see www.icma-group.org

The International Swaps and Derivatives Association (ISDA), which represents participants in the privately negotiated derivatives industry, is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985, and today has over 725 member institutions from 50 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

The Bond Market Association (TBMA), with offices in London, New York, and Washington D.C. , represents securities firms, banks and asset managers that underwrite, trade sell and invest in debt securities and other financial products globally. The Association has 592 members, associate members and members in Divisions and affiliated Forums, including the European Securitisation Forum, the European Primary Dealers Association, the European High Yield Association, the American Securitization Forum, and the Asset Managers Forum. More information is available at www.bondmarkets.com

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Notes to editors

Global Capital Markets Board (GCMB):

ICMA, ISDA and TBMA together set up the Global Capital Markets Board in 2006 as a strategic vehicle for coordination, collaboration and transparency between the key organisations representing the capital markets regionally and worldwide.

Markets in Financial Instruments Directive (MiFID)

Article 21(1) of the Markets in Financial Instruments Directive or MiFID (Directive 2004/39/EC) reads as follows

“Member States shall require that investment firms take all reasonable steps to obtain, when executing client orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size nature or any other consideration relevant to the execution of the order. Nevertheless, when there is a specific instruction from the client the investment firms shall execute the order following the specific client instruction”

Article 44 of the level 2 implementing directive reads:

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 MiFID]:

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

2 An investment firm satisfies its obligation under Article 21(1) of the Directive to obtain the best possible result for a client to the extent that it executes an order from the client

MiFID Connect

A five-stage project, led by a group of 11 sell-side and buy-side trade associations for establishing a practical, cost-efficient and market-sensitive policy towards implementation of MiFID, in both the wholesale and retail financial service sectors, which is intended to reduce regulatory risk and provide real and tangible assistance to their member firms in terms of coming into compliance with the new requirements. www.mifidconnect.com