Monetary Authority of Singapore

SECURITIES AND FUTURES ACT
(CAP. 289)

GUIDELINES TO MAS NOTICE SFA 04-N16
ON EXECUTION OF CUSTOMERS' ORDERS

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1 Purpose

1.1 These Guidelines are issued by the Monetary Authority of Singapore pursuant to Section 321 of the Securities and Futures Act (Cap. 289) ("SFA") and apply to all capital markets intermediaries as defined in Notice SFA 04-N16 on Execution of Customers' Orders (the "Notice").

1.2 These Guidelines provide guidance on the requirements relating to the placement and execution of customers' orders on the best available terms ("Best Execution") as set out in the Notice, and should be read in conjunction with the Notice.

1.3 The expressions used in these Guidelines have the same meanings as those found in the Notice, except where expressly defined in these Guidelines or where the context otherwise requires.

2 Overarching Requirement

2.1 A capital markets intermediary shall establish and implement Best Execution policies and procedures taking into account a range of factors. The factors may include price, costs[1], speed, likelihood of execution and settlement, size and nature of the order, or any other considerations relevant to the placement and/or execution of the order.

3 Order Placement and/or Execution Policy

3.1 A capital markets intermediary should establish and implement Best Execution policies and procedures which cover all capital markets products and all capacities in which it is acting in (i.e. whether as agent or principal).

3.2 The Best Execution policies and procedures have to be approved by the capital markets intermediary's Board of Directors or an appropriate management committee

[1] The 'costs' factor may include research cost, as research cost has not been required to be unbundled from execution cost. The expectation for fund management companies regarding soft dollars from brokers is that it is allowed only if the following conditions are met: (i) soft dollars received can reasonably be expected to assist in the fund management company's provision of investment advice or related services for the customer; and (ii) the fund management company does not enter into unnecessary trades in order to achieve a sufficient volume of transactions to qualify for soft dollars.

appointed by the Board of Directors, and periodically reviewed to ensure that they remain relevant.

3.3 Best Execution should apply when executing customers' orders directly on an execution venue or placing customers' orders with another capital markets intermediary or a person who is licensed, authorised, regulated or otherwise exempted in relation to dealing in capital markets products in a foreign jurisdiction, for execution.

3.4 Where there is more than one execution venue or broker available to place or execute the customer's order for a particular capital markets product, the capital markets intermediary should consider the respective merits of each venue or broker, and document[2] the basis for selecting the venue(s) or broker(s). A capital markets intermediary may indicate a preferred execution venue or broker in its Best Execution policies and procedures, if the time and costs incurred in considering more than one execution venue or broker outweigh any improvement in the quality of the execution of the customer's order (such as when the additional costs are borne by the customers).

3.5 A capital markets intermediary should consider its Best Execution obligation to achieve the best possible outcome on a consistent basis, regardless of whether customers' orders are executed on-exchange or off-exchange (such as for cross trades).

3.6 When executing orders as a principal, a capital markets intermediary should check the fairness of the price proposed to the customer, for example, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

3.7 A capital markets intermediary should place and/or execute a customer's order following the specific instruction, if any, from the customer. When the capital markets intermediary places and/or executes an order following specific instruction from the customer, it would be regarded as having satisfied its Best Execution obligations only in respect of the part or aspect of the order to which the customer's instruction relates.

3.8 In dealing with a customer who is an accredited investor or expert investor, a capital markets intermediary should assess, and document[3] its assessment to determine, the circumstances under which such a customer does not rely on the capital market intermediary to place or execute his order(s) on the best available terms. The

[2] The documentation is expected to be based on a particular capital markets product, and it is not expected on a per trade basis.
[3] A capital markets intermediary should also document whether its assessment for non-reliance is performed on a once-off or per trade basis

capital markets intermediary may take into consideration circumstances such as whether the customer is the one who initiates the order or whether the customer specifies the venue and price at which the order should be executed, or relevant guidance[4] provided by other regulators that it has assessed to be appropriate in determining non-reliance.

3.9 A capital markets intermediary should include in the Best Execution policies and procedures the factors which it has taken into account, and the considerations for determining the relative importance of the various factors, when placing and/or executing customers' orders.

3.10 In determining the relative importance and/or the applicability of the factors, a capital markets intermediary should take into account the following considerations:

(a) the types of customers it serves, whether retail customers[5] or otherwise;
(b) the types of capital markets products for which it accepts, places or executes orders;
(c) the characteristics of the execution venues or brokers to which the order can be directed; and
(d) the characteristics of the customer's orders.

4 Monitoring

4.1 A capital markets intermediary should also establish adequate systems or arrangements to monitor, on a periodic basis: (i) compliance with its Best Execution policies and procedures; and (ii) the effectiveness of its Best Execution policies and procedures. In monitoring the effectiveness of its Best Execution policies and procedures, a capital markets intermediary should assess if its execution of transactions have delivered the best available terms to its customers on a consistent basis. The monitoring systems or arrangements, as well as the frequency of monitoring, should be commensurate with the nature, scale and complexity of the business of the capital markets intermediary.

4.2 Possible ways of monitoring include comparing prices and other relevant factors to ensure that the execution venues or brokers used by the capital markets intermediary do not give rise to significant or systematic deviations in the quality of execution provided to its customers vis-à-vis other execution venues or brokers, and triggering transactions for further review when an execution factor (such as price or execution cost) falls outside a given tolerance from a pre-determined benchmark. A capital markets intermediary may employ other forms of monitoring, for example by

[4] For example, the Markets in Financial Instruments Directive's four-fold cumulative test.

[5] "Retail customer" means a customer who is not an accredited investor, an institutional investor or an expert investor (as defined in section 4A of the SFA).

generating daily execution reports that compare executed trades against benchmarks such as Volume Weighted Average Price.

4.3 Where an automated order routing system is used, a capital markets intermediary should monitor to ensure that its infrastructure works as intended and does not result in unnecessary delays in the transmission of orders to the exchange.

5 Disclosure to Customers on Order Execution

5.1 Prior to the placement and execution of customers' orders, a capital markets intermediary should provide sufficient information to its customers on its Best Execution policies. The information must be provided to the customers in writing, including via electronic means[6], provided that customers are aware of the mode of communication.

5.2 A capital markets intermediary should ensure that the information provided to its customers is presented in a clear manner and should avoid the use of technical jargon that may not be easily understood.

[6] For example, a capital markets intermediary may choose to provide the disclosure via publication on its website, or as part of the terms and conditions in its customer agreement.