

Order Execution

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1. Order execution

1.1. Introduction

Credit institutions usually perform transactions in financial instruments as commission agents – as simple agents or by dealing in their own name – or as independent dealers by way of fixed price transactions.

Since credit institutions usually do not conclude the sale/purchase of financial instruments on their own behalf, but procure such transactions for further execution, such transactions usually constitute transactions on a commission basis.

1.2. “Best execution”

1.2.1. Execution policy

When executing orders, credit institutions shall take all reasonable steps to obtain the best possible result for their customers, taking into account the price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order (principle of “best execution”). If explicit customer instructions have been given, the credit institution shall execute the order in accordance with such explicit instructions.

Instructions may be issued in general or on a case-by-case basis – subject to acceptance by the credit institution; however, the credit institution shall in any event be required to issue a clear and unambiguous warning to retail clients (non-professional clients) that instructions may result in the execution of orders inconsistent with the credit institution’s execution policy (sec. 54 (2) no. 3 of the new Austrian Securities Supervision Act). Such warning may also be issued in a general or individual format.

Credit institutions shall set down their execution policy to express their commitment to the best execution principle (exceptions: (i) factual: issue and redemption of shares in domestic investment funds and real estate funds and of shares in foreign investment companies that may be marketed in Austria through a custodian bank or through any issuing or depository bank with a comparable function; (ii) personal: transactions executed with “eligible counterparties”). Customers shall be notified about this execution policy in a suitable format (sec. 53 (1) of the new Austrian Securities Supervision Act). Credit institutions shall meet this obligation by presenting their execution policy to the customer; this shall be done by including the policy in contract forms or handing out the policy directly or, upon agreement with the customer, publishing the policy on the website.

1.2.2. Execution policy criteria

Decisive aspects of the execution policy are:

- price,
- costs,
- speed of execution,
- likelihood of execution and settlement,
- scope (scope of execution),
- type (order type)
- other relevant aspects.

The above-listed aspects shall be weighted taking into account the following execution criteria:

- type of customer, respective customer features,

- order features (unlimited, limited order...),
- financial instrument features,
- features of execution venues to which the order can be forwarded.

The individual order execution features shall be weighted against each other in consideration of their relative importance. Such weighting shall constitute the credit institution's assessment of the importance of individual aspects to the respective customer. Such weighting shall also be subject to certain influencing factors. Compared to a buyer of a share or warrant, the buyer of a bond, for instance, usually places less emphasis on quick execution than on other execution aspects.

1.2.3. Consent requirement

Credit institutions shall obtain their customers' agreement to their execution policy (sec. 53 (1) of the new Austrian Securities Supervision Act). In addition, a credit institution shall obtain the prior express consent of its customer before proceeding to execute the customer's orders outside a regulated market or an MTF. Such consent may be obtained either in the form of a general agreement or for individual transactions (sec. 52 (5) no. 1 of the new Austrian Securities Supervision Act). There is no specific form requirement to be observed for this purpose. General agreements are also permitted, which, if the customer remains silent or fails to object within a reasonable period of time, are assumed to be an express consent or an objection.

1.2.4. Evaluation

Credit institutions shall monitor the efficiency and efficacy of their execution policy. In particular, they shall assess on a regular basis, whether the execution venues indicated in the order execution policy ensure the best possible results for customers or whether they need to make changes to their execution policy.

The execution policy as well as arrangements regarding order execution shall be reviewed annually by the credit institutions (sec. 53 (3) of the new Austrian Securities Supervision Act). Such a review shall always be performed in the event of a major change affecting the credit institution's ability to continue generating the best possible result in executing its customers' orders at the venues specified in the execution policy.

The evaluation of the execution policy shall – depending on the type of financial instruments – mainly be based on the criteria of price level and liquidity (with regard to retail clients, see sec. 1.5. para. 2).

1.2.5. Obligations in case of third-party execution

If a credit institution avails itself of a third party – e.g., an intermediary commission agent – to execute customer orders, the “best execution” obligation shall be deemed met if the following principles are observed:

- For each type of instrument, the execution policy of credit institutions must specify the category of facilities in which orders are placed or to which orders are transferred for execution.
- The credit institutions must ensure that essential customer interests are safeguarded when selecting third-party facilities and that the credit institution is able to meet its statutory “best execution” obligations.

1.3. Execution venue

Insofar as no explicit customer instructions have been issued, credit institutions reserve the right to select the specific venue for the execution of customer orders; in so doing, customer interests shall be safeguarded as best possible. For each type of financial instrument, the execution policy of credit institutions shall provide information about the various execution venues at which the credit institution executes its customer orders and the decisive factors for selecting the execution venue. At least those execution venues shall be listed at which the bank constantly achieves the best results when executing customer orders (sec. 52 (3) no. 1 of the new Austrian Securities Supervision Act). In particular, the following aspects shall be taken into account:

- In the case of single or multiple listings, execution of an order in Austria or abroad may be an option.
- Execution at a stock exchange is not automatically in the best interest of the customer. Therefore, there is no legal or actual requirement to execute an order at a stock exchange.
- Due to the complexity of reliably identifying the best stock exchange – in as much as this is in the parties' interest – standardisation shall be considered appropriate: In principle, the selection of a stock exchange shall be permissible, if it is identified as “competent“ by the credit institution's internal organisation and if it is a stock exchange at which comparable orders are usually executed. An “order by order” review is therefore not necessary.
- If a purchase order for a financial instrument can be executed at several competing venues – to allow for comparison and evaluation by the customer of the execution venues specified by the credit institution and suitable for order execution – in the interest of best execution, evaluation shall take into account the credit institution's commissions and the costs of execution at the contemplated individual venues;

It shall be permissible, for example, to differentiate by the category of financial instruments, which may result in the allocation of at least one venue for each category.

1.4. Execution time

In the absence of customer instructions to the contrary, customer orders shall be executed without delay. To allow for a transaction to be executed on the same (stock exchange) day, an order must be placed with the credit institution in due time to enable the bank to forward the order within the period of time specified for the relevant stock exchange or trading centre. If it is not possible to execute customer orders on the same day – e.g., because they were received too late or because it was not possible to conclude a hedging transaction – they shall be marked down for the next trading day if not customer instructions to the contrary have been given.

The credit institution must have adequate procedures and systems in place to ensure immediate, fair and expedient order execution. In particular, the following precautions shall be taken:

- Execution and hedging transactions shall be recorded without delay and allocated to the respective customers;
- Comparable customer orders shall be executed in sequence and without delay (first in-first out or priority principle), unless the type of order or the predominating market conditions make this impossible or it is in the customer's interest to act differently. In case of simultaneous receipt of orders by several customers, the option of proportionate consideration shall remain (principle of partial execution).
- Credit institutions shall notify retail clients without delay of all relevant difficulties that are of relevance for the specific execution of the order as soon as they have obtained knowledge of such difficulties.

In case of customer limit orders in respect of shares admitted to trading on a regulated market, the following special regulation shall apply (sec. 55 (2) of the new Austrian Securities Supervision Act):

If it is not possible to execute these orders without delay under the prevailing market conditions, the banks shall take actions to facilitate the fastest possible execution of such orders by way of immediate and adequate publication – i.e., easily accessible by other market participants – unless the customer has explicitly given instructions to the contrary. This publication obligation is usually met with a transfer to a regulated market or to a multilateral trading facility operating a commission book trading system.

1.5. Prices and costs

In case of transactions on a commission basis, the price underlying the settlement shall be determined based on principles under commission law.

If a credit institution executes an order on behalf of a retail client, the best possible result shall be determined with regard to total remuneration, i.e. the price for the financial instrument and the costs associated with order execution, with the latter costs covering all expenses incurred by the customer in direct connection with the order execution, incl. execution venue charges, clearing and processing charges as well as any other charges paid to third parties involved in the execution of the order (sec. 54 (1) of the new Austrian Securities Supervision Act).

1.6. Block orders

Under specific conditions it may be in the customer's interest for a credit institution to combine several orders. The credit institution is also required to do so under the principles of commission law if the benefit is recognisable upon due diligence. In such cases, credit institutions shall charge the customer the thus obtained better price.

In the case of such "block orders", credit institutions shall apply procedures and systems that guarantee the immediate, fair and speedy processing of customer orders in relation to other customer orders or the credit institution's trading interests.

The aggregation of several orders into "block orders" is tied to the following conditions (sec. 56 (1) of the new Austrian Securities Supervision Act):

- It cannot be expected that aggregating the orders and transactions will on the whole be detrimental to every customer whose order is aggregated with other customers' orders.
- Each customer whose order is to be aggregated shall be notified that such aggregation may be disadvantageous in respect of a specific order;
- Guidelines shall be established and effectively implemented for the allocation of orders, regulating the fair allocation of aggregated orders and transactions also taking into account the effect of the volume and price of orders and the allocation and partial handling of orders.

The following principles shall be observed when aggregating customer orders with proprietary orders:

- Aggregated transactions may not be allocated in a manner that is disadvantageous to any customer (sec. 57 (1) of the new Austrian Securities Supervision Act).
- In case of partial execution of the aggregated order, customer orders shall be allocated with priority, unless the credit institution cannot prove that execution would otherwise not have been possible at all or only in an inferior way (sec. 57 (2) of the new Austrian Securities Supervision Act).

- The guidelines for the allocation of credit institution orders shall provide for procedures that prevent the new allocation of proprietary transactions executed together with the customer orders from becoming disadvantageous for the customer (sec. 57 (3) of the new Austrian Securities Supervision Act).

1.7. Customer information

1.7.1. Customer information at a glance

In summary, the credit institution shall have the following information requirements vis-à-vis customers as part of its order execution.

1.) Provision of a summary of the execution policy and obtaining the customer's consent (sec. 53 (1) of the new Austrian Securities Supervision Act); notification of customer in case of major changes to the execution policy, but no renewed consent.

2.) As part of its execution policy, information about execution venues (sec. 52 (3) no. 1 of the new Austrian Securities Supervision Act), for retail clients the relative meaning of execution aspects / criteria or the manner in which the relative importance of such aspects is determined (sec. 54 (2) no. 1 of the new Austrian Securities Supervision Act) and a list of trading centres on which the execution policy of the credit institution is largely based (sec. 54 (2) no. 2 of the new Austrian Securities Supervision Act).

3.) In the case of retail clients, customer warnings to the extent that instructions may prompt an execution that is inconsistent with the credit institution's execution policy (sec. 54 (2) no. 3 of the new Austrian Securities Supervision Act).

4.) Obtaining the customer's express consent to over-the-counter execution and execution outside of an MTF in a general or individual form (sec. 52 (5) no. 1 of the new Austrian Securities Supervision Act).

5.) Information for retail clients when major problems occur during order execution.

6.) Information to customers regarding the possible negative consequences of aggregating several customer orders (sec. 56 (1) no. 2 of the new Austrian Securities Supervision Act).

1.7.2. Form requirements

The credit institution shall inform the customer of the execution policy in a suitable manner; depending on the agreement with the customer, i.e. the inclusion in agreement forms, other delivery or separate agreement with the customer transmission, transmission via the website may be considered as an option.

Information as defined in sections 7.1.2., 7.1.3. and 7.1.5. shall be made available to retail clients on a permanent data carrier or on a website. The following conditions shall be met for transmission via a website:

1.) The provision of such information via this medium complies with the general conditions of this transaction; in the present context, this is usually the case if a customer provides an e-mail address for the execution of orders.

2.) The customer must specifically consent to the provision of such information in that form;

3.) The customer must be notified electronically of the address of the website, and the place on the website where the information can be accessed.

4.) The information must be accessible continuously via that website for such period of time as the customer may reasonably need to inspect it.

1.8. Recording obligations

For each order placed, the credit institution shall record the information required under Art. 7 of the Implementing Regulation (EC) 1287/2006 (sec. 66 (1) of the new Austrian Securities Supervision Act).

2. Order processing

2.1. Recording obligations

For each order placed, the credit institution shall record the information required under Art. 7 of the Implementing Regulation (EC) 1287/2006 (sec. 66 (1) of the new Austrian Securities Supervision Act).

2.2. Customer notification

Credit institutions shall notify their customer in suitable manner of the services provided, i.e., after execution of the order. The customer shall be provided the main information regarding the execution of such order on a permanent data carrier without delay. In the case of foreign currency transactions, the order shall be deemed executed once the currency portion has been completed as well. Upon request, customers shall be notified of the order execution status.

There are special reporting obligations to be met in the case of retail clients. In particular, retail clients shall be provided a confirmation of order execution on a permanent data carrier as quickly as possible and in any event no later than by the first business day following order execution or – if he receives confirmation of execution from a third party – no later than by the first business day following receipt of such third party confirmation. Such a reporting obligation shall be replaced by a confirmation of equivalent content, which shall be sent to the retail client without delay by another person.

2.3. Safekeeping requirement

Order-related records (concerning order acceptance, execution and processing) as well as customer notifications shall be retained for a period of at least five years (sec. 66 (2) of the new Austrian Securities Supervision Act).

The data shall be stored on a data carrier that meets the following requirements:

- Accessibility by the competent regulatory authority
- Traceability of each major stage of order processing
- Visibility of any corrections made and other alterations
- It must not be possible to otherwise manipulated or modify records.

Records of the credit institution documenting the business relationship as such, i.e., the rights and duties of the credit institution and its customers under a service agreement or the conditions for which the credit institution provides services to customers, shall at least be kept for the duration of the business relationship with such customers.