

Annex – Legitimate Reliance (or four-fold test) in connection to Banco Santander S.A. best execution obligations under MiFID

Banco Santander (the “Bank”) will provide best execution when we are executing an order on a client’s behalf or when receiving and transmitting an order on **behalf of a client**.

However, the Bank may not owe best execution in all cases. Following the Commission statement on legitimate reliance¹: “the client *legitimately relies* on the firm to protect his or her interests in relation to the pricing and other elements of the transaction – such as speed or likelihood of execution and settlement – that may be affected by the choices made by the firm when executing the order’.

The starting point for the Bank is that:

- Retail clients do legitimately rely on the firm to protect their interests in relation to the pricing and other parameters of a transaction (with the intention that best execution is always provided to retail clients); but
- for Professional clients this starting point is reversed. The assumption is that they do not rely on the Bank to achieve best execution.

In order to determine whether there is legitimate reliance from a CIB client, the Bank should consider, jointly, the following:

- Whether the Bank approaches (initiates the transaction with) the client or the client instigates the transaction by approaching the Bank,
- Whether it is the market practice to “shop around” (to do so, the client approaches several dealers for a quote),
- The relative levels of transparency within a market, and
- The terms of the agreement with the client and the information provided by the Bank.

Where, according to the above, the Bank considers that the client does not rely on the firm to protect its interest, **best execution may not apply**, and the Bank will not be under the obligation to take all sufficient steps to execute in the best possible result for the client as set out in the Order Execution Policy².

¹ Opinion ESC-07-2007 of 19 March 2007

² Banco Santander control framework will be updated by the first line of defence in accordance with the criteria provided by the second line of defence.