



Carlo Comporti
The Committee of European Securities Regulators
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France

CFA Institute
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1000 Brussels
Belgium

Brussels, 28th May 2010

Dear Mr Comporti,

**CESR Technical Advice to the European Commission in the Context of the MiFID Review
- Investor Protection and Intermediaries**

CFA Institute is pleased to comment on the Committee of European Securities Regulators' (CESR) consultation on CESR Technical Advice to the European Commission in the Context of the MiFID Review - Investor Protection and Intermediaries (the "Consultation").

CFA Institute, through its members' experience in international markets and different investment disciplines, represents the interests of investors and investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide. CFA Institute promotes fair, open, and transparent global capital markets, and advocates for investors' protection.

Executive Summary

The consultation comprises a number of proposals concerning the upcoming review of the Market in Financial Instruments Directive (MiFID). Those proposals are divided into six areas:

- Requirements relating to the recording of telephone conversations and electronic communications
- Execution quality data
- MiFID complex vs. non-complex financial instruments
- Definition of personal recommendation
- Supervision of tied agents and related issues
- MiFID options and discretions

By and large, the proposals are an attempt to harmonize the measures taken across the EU.

CFA Institute welcomes the key proposals set out in the consultation. Most notably:

- CFA Institute supports a minimum harmonising recording requirement as proposed by CESR, but opposes an exemption from these requirements for small firms.

- CFA Institute believes that it would be beneficial for investors to have available data about prices, costs, volumes, likelihood of execution and speed across all trading venues. A common standard on how to calculate and present certain execution quality metrics should enhance comparability and hence further facilitate the selection of execution venue.
- CFA Institutes supports CESR's proposal to further harmonize the rules so that investment firms, regardless of in which member state they are domiciled, are allowed to appoint tied agents. CFA Institute also supports an obligation addressed to the home competent authority to disclose to the public a list of tied agents involved in cross-border activities. As an investor it is important that it is possible to verify if the person or firm the investor is dealing with really is a tied agent.
- In a more general sense, CFA Institute welcomes further harmonization. From an investor perspective it is an advantage to know that the same level of protection is granted no matter in which Member State you are located.

We attach our response that addresses the questions of the Consultation. Please do not hesitate to contact us, should you wish to discuss any of the points raised.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'R. Preece'.

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A handwritten signature in blue ink, appearing to read 'M. Sjöberg'.

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CFA Institute is best known for developing and administering the Chartered Financial Analyst® curriculum and examinations and issuing the CFA Charter. With headquarters in Charlottesville, VA, and regional offices in New York, Hong Kong, London and Brussels, CFA Institute is a global, not-for-profit professional association of more than 100,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 135 countries, of whom more than 88,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 137 member societies in 58 countries and territories. In the European Union, CFA Institute has 12,500 members spread across all 27 Member States.

CFA Institute develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute Code of Ethics and Standards of Professional Conduct, Global Investment Performance Standards (“GIPS®”), and the Asset Manager Code of Professional Conduct (“AMC”). It represents the views of investment professionals and investors before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

Our responses to the Consultation’s questions are set out below.

Part 1: Requirements relating to the recording of telephone conversations and electronic communications

Questions:

1. *Do you agree with CESR that the EEA should have a recording requirement? If not, please explain your reasoning.*
2. *If the EEA is to have a recording requirement do you agree with CESR that it should be minimum harmonising? If not, please explain your reasoning.*
3. *Do you agree that a recording requirement should apply to conversations and communications which involve:*
 - *the receipt of client orders;*
 - *the transmission of orders to entities not subject to the MiFID recording requirement;*
 - *the conclusion of a transaction when executing a client order;*
 - *the conclusion of a transaction when dealing on own account?*
4. *If you do not believe that a recording requirement should apply to any of these categories of conversation/communication please explain your reasoning.*

5. *Do you agree that firms should be restricted to engaging in conversations and communications that fall to be recorded on equipment provided to employees by the firm?*
6. *Do you agree that firms providing portfolio management services should be required to record their conversations/communications when passing orders to other entities for execution based on their decisions to deal for their clients? If not, please explain your reasoning.*
7. *Do you think that there should be an exemption from a recording requirement for:*
 - *firms with fewer than 5 employees and/or which receive orders of a total of €10 million or under per year; and*
 - *all orders received by investment firms with a value of €10,000 or under.*
8. *Do you agree that records made under a recording requirement should be kept for at least 5 years. If not, please explain why and what retention period you think would be more appropriate.*
9. *Are there any elements of CESR's proposals which you believe require further clarification? If so, please specify which element requires further clarification and why.*
10. *In your view, what are the benefits of a recording requirement?*
11. *In your view, what are the additional costs of the proposed minimum harmonising recording requirement (for fixed-line, mobile and electronic communications)? Please specify and where possible please provide quantitative estimates of one-off and ongoing costs.*
12. *What impact does the length of the retention period have on costs? Please provide quantitative estimates where possible.*

CFA Institute has long held the view that within a single jurisdiction, all market participants engaged in similar activities should be held to the same standards and adhere to the same rules, regardless of the domicile, size, business, or exchange listing of a firm. Consequently, CFA Institute supports the minimum harmonising recording requirement as proposed by CESR.

Based on this same principle, we do not support the proposals to exempt small firms from the recording requirement. If, as suggested, recording is an important investor protection

mechanism, then clients of small firms deserve protections that are equal to those afforded to clients of larger firms.

CFA Institute does not have established opinions regarding the remainder of the technical questions raised in this Part 1.

Part 2: Execution quality data (Art 44(5) of the MiFID Level 2 Directive)

Questions:

13. *Do you agree that to enable firms to make effective decisions about venue selection it is necessary, as a minimum, to have available data about prices, costs, volumes, likelihood of execution and speed across all trading venues?*
14. *How frequently do investment firms need data on execution quality: monthly, quarterly, annually?*
15. *Do you believe that investment firms have adequate information on the basis of which to make decisions about venue selection for shares?*
16. *Do you believe investment firms have adequate information on the basis of which to make decisions about venue selection for classes of financial instruments other than shares?*
17. *Do you agree with CESR's proposal that execution venues should produce regular information on their performance against definitions of various aspects of execution quality in relation to shares? If not, then why not?*
18. *Do you have any comments on the following specifics of CESR's proposal:*
 - *imposing the obligation to produce reports on regulated markets, MTFs and systematic internalisers;*
 - *restricting the coverage of the obligation to liquid shares;*
 - *the execution quality metrics;*
 - *the requirement to produce the reports on a quarterly basis?*
19. *Do you have any information on the likely costs of an obligation on execution venues to provide regular information on execution quality relating to shares? Where possible please provide quantitative information on one-off and ongoing costs.*
20. *Do you agree with CESR that now is not the time to make a proposal for execution venues to produce data on execution quality for classes of financial instruments other than shares? If not, why not?*

CFA Institute supports CESR's proposal to make data available to investment firms concerning prices, costs, volumes, the likelihood of execution, and speed across all trading venues. Investment firms would benefit greatly from this data, published at least quarterly, as it would give them the ability to compare the data of different venues against their own performance. With this information available, investment firms are better equipped to make any changes they may feel are needed to improve returns for their clients.

A common standard on how to calculate and present certain metrics could potentially enhance comparability and hence facilitate venue selection further. Therefore, CFA Institute supports requirements to produce periodic reports on execution quality using metrics defined by CESR. These should be minimum requirements (akin to the requirements in the United States under SEC rules 605 and 606) and should not prevent trading venues from voluntarily publishing additional sets of data using other metrics.

Moreover, a common data standard should reduce information asymmetry between investment firms and their clients. The transparency benefits from such common reporting standards will enhance investor protection by making it easier to monitor how investment firms are fulfilling their client obligations to obtain best execution.

We believe that obligations to publish reports on execution quality should be imposed upon regulated markets, MTFs and systematic internalisers on the principle that all trading venues should be subject to the same rules. However, we disagree with CESR that the obligation to publish execution quality metrics should be restricted to the most liquid shares. Investors in less-liquid securities require at least as much information over execution quality as investors in the most liquid securities. Less-liquid securities typically have the widest bid-offer spreads and also the greatest variation in spreads across trading venues. Accordingly such stocks provide intermediaries with the greatest temptation to engage in trading activities that serve their own interests above those of the investor. In order to ensure that investors in all types of shares are treated equally, and to mitigate further polarisation between liquid and less-liquid shares, we believe that the coverage of the obligations specified by CESR should extend to all shares.

Part 3: MiFID complex vs. non complex financial instruments for the purposes of the Directive's appropriateness requirements

Questions:

21. Do you have any comments about CESR's analysis and proposals as set out in this Chapter?
22. Do you have any comments on the proposal from some CESR members that ESMA should work towards the production of binding Level 3 standards to distinguish which

UCITS should be complex for the purpose of the appropriateness test?

23. What impact do you think CESR's proposals for change would have on your firm and its activities? Can you indicate the scale or quantify of any impact you identify?

CFA Institute has no comments in this regard.

Part 4: Definition of personal recommendation

Questions:

24. Do you agree with the deletion of the words 'through distribution channels or' from Article 52 of the MiFID Level 2 Directive?

CFA Institute has no comments in this regard.

Part 5: Supervision of tied agents and related issues

Questions:

25. Do you agree with CESR that the MiFID regime for tied agents has generally worked well, or do you have any specific concerns about the operation of the regime?

26. Do you agree with the proposed amendments to Articles 23, 31 and 32 of MiFID?

27. Could you provide information on the likely impacts of the deletion of the ability of tied agents to handle client money and financial instruments?

CESR proposes to remove the discretion for Member States to allow investment firms authorised in their territory to appoint tied agents (i.e. sales representatives). At present it is up to each Member State to decide whether they wish to allow investment firms in their jurisdiction to appoint tied agents. CESR's proposal would make it compulsory for member states to allow tied agents.

CFA Institute supports harmonization in this aspect. From an investor protection perspective it does not make sense to have diverging rules in this area. CFA Institute also supports prohibition for tied agents to handle clients' assets, the rationale being that tied agents themselves are not authorised persons.

It is important for investors to be able to verify if the persons or firms they are dealing with really are tied agents. An obligation addressed to the home competent authority of the investment firm appointing the tied agent to disclose to the public a list of tied agents involved in cross border activities would therefore be beneficial for investors. This would augment transparency and strengthen the level of investor protection.

Part 6: MiFID Options and Discretions

Questions:

28. Do you agree with the suggested deletions and amendments to the MiFID texts proposed in this chapter?

On a general level CFA Institute encourages further harmonization. From an investor protection stand point, it is advantageous if one can be confident that the same level of protection is granted throughout all 27 EU Member States. A patchwork of different rules has the opposite effect, lowering the level of investor protection through uncertainty regarding which rules apply. Consequently, CFA Institute supports further removal of discretions.

28th May 2010.