

Committee of the European Securities Supervisors (CESR)

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– submitted online via www.cesr.eu –

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9 August 2010

EAPB on the CESR Technical Advice to the European Commission in the context of the MiFID Review – Client Categorisation

The European Association of Public Banks (EAPB) is thankful for the possibility to comment on the consultation paper on “CESR’s Technical Advice to the European Commission in the context of the MiFID Review – Client Categorisation (CESR/10-831)”. The existing regime of categorising clients has been implemented – in a very cost-intensive way – and works well. The present provisions foresee the necessary flexibility in giving advice to different clients in altering situations. We are not aware of any practical problems that would make an alignment necessary and are therefore rather critical towards the suggestions made by CESR in the present consultation paper.

I. Answers to the questions on Part 1:

Q1. Confirmative.

Q2. We basically welcome the attempt to find clearer definitions for terms such as "other authorised or regulated financial institutions", "other institutional investors", etc., especially with a view to the different regulations in the Member States. We are critical towards the narrowing of the definition of the professional client and do not deem it necessary. Particularly banks, insurances, funds, etc. should continue to be classified as professional clients since they have the extraordinary knowledge and experience resulting out of their business. In this respect we would like to point out that the classification of credit institutions turned out impractical. Criteria such as "investment objective", "knowledge and experience", "financial circumstances" are unemployable in this case.

Q3. ---

Q4. The provisions describe the client base clearly. We are not aware of any practical problems. The suggestions in paragraph 19 could be given consideration.

II. Answers to the questions on Part II:

Q5. A clarification of what can be understood as "public bodies that manage public dept" would be welcomed. To give an example, the Austrian Federal Financing Agency (Österreichische Bundesfinanzierungsagentur, ÖBFA), which is a company with limited liability (GmbH) and completely owned by the Republic of Austria should fall under the definition of a "public body". We would also welcome if local authorities, including municipalities, are classified as professional clients per se since they are self-responsible for their budget and therefore usually have the necessary financial knowledge and experience.

III. Answers to the questions on Part III:

Q6. It does not appear reasonable to introduce an obligation to assess the knowledge and experience of professional clients per se. This would make the categorisation of the professional client per se absurd. If any professional client seeks a higher level of protection, he can vote to be classified as retail client. It does also not appear reasonable to assess the knowledge and experience of other clients, particularly those who already have a high level of expertise (credit institutions, investment firms, insurance companies). What is even more, such an approach would counteract the present practise.

Q7. We reject the obligation to apply such a test in the case of those undertakings. Practical experiences have shown that such professionals have the necessary knowledge and experience. For other clients according tests already exist.

Q8. Amending the provisions with respect to OTC derivatives or other complex products is not reasonable. Regularly updating client profiles already absorbs a lot of time and resources and is more than sufficient with respect to a thorough investor protection.

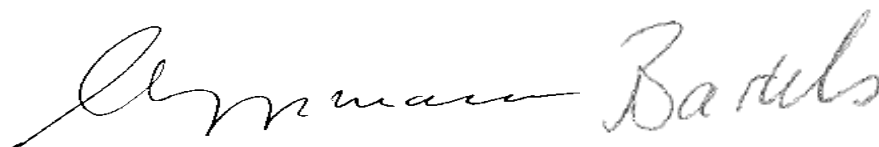
Q9. ---

Q10. We do not deem a clarification of standards for ECPs necessary. We reject particularly the suggestions made in paragraph 35 since they would exclude banks that deal with complex products or issued them themselves and only lead to more uncertainty. The existing obligations put upon ECPs are quite strict. It would be appropriate to let such clients either demand more information themselves or vote for another categorisation. The principles of „acting honestly, fairly and professionally“ are already today obligatory for ECPs acting in their clients' interest.

Q11. ---

Should you have any questions, please do not hesitate to contact us.

Kind regards,

Two handwritten signatures in black ink. The first signature, 'Schoppmann', is written in a cursive style. The second signature, 'Bartels', is also in cursive and appears to be written with a different pen or in a different style.

Henning Schoppmann
EAPB

Boris Bartels
EAPB

The European Association of Public Banks (EAPB) represents the interests of 35 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.