Verband unabhängiger Vermögensverwalter
Deutschland e.V.

28th May 2010

CESR
Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris+
France

Dear Sir or Madam,

Ref.: CESR/10-417 CESR

VuV- The Association of Independent Fund Managers- represents the interests of approximately 190 members covering the relevant part of the market.

With regards to the above consultation paper we would like to express the following opinion:

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

1. Do you agree with CESR that the EEA should have a recording requirement? If not, please explain your reasoning.

We do not agree with CESR´s view for the following reasons:

- the confidentiality between the asset manager and his client would be compromised

- the expenses involved would be considerable

- specific measures would be necessary in order to ensure compliance with data protection legislation.

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.

If harmonising were to be introduced, it should be at a minimum level.

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?

We generally reject the proposal regarding the necessity of compulsory recordings, therefore there is no need to answer questions concerning recording methods.

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.

It is common practice in Germany to record orders given to brokers or banks.
We thus agree with the suggestion that orders should have to be recorded.

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.

With reference to the above, we believe that no exemptions should be made.

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.

A retention period of at least 5 years would be advisable.

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.

In our view, there is no need for further clarification.

10. In your view, what are the benefits of a recording requirement?

As stated above, it would not be beneficial to make recording compulsory.

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.

Due to lack of experience in this field, we are unable to answer the questions above.

To summarise, we believe that recording requirements will not lead to improved consumer and market outcomes.

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

The members of VuV do not execute orders themselves; they are instead executed by carefully selected banks and brokers. The decisive factor is the best possible result for our members´ clients, based on the track record of the bank / broker chosen as above.

Results are regularly monitored as prescribed by German law. Information about execution is obtained as outlined in the consultation paper para. 88. first and third

bullet point. We thus maintain that post-trade review is sufficient to protect the interests of the clients.

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

Our members manage their clients´ assets in transferable securities on a discretionary basis. This is within a framework of investment guidelines agreed upon with the client concerned. This would mean that in asset management, only professional market participants who are able to understand and assess complex financial instruments act on behalf of the retail client. We therefore do not see any necessity to tighten requirements. CESR´s question as to the impact of changes can thus be considered irrelevant as far as our members are concerned.

Part 4: Definition of personal recommendation:

Considering the vital importance of investment advice, we are strongly in favour of a precise definition of this financial service. In our opinion CESR´s suggestion would be helpful.

Part 5: Supervision of tied agents and related issues:

Tied agents are employed by our members on a relatively small scale.

To answer CESR´s suggestions and questions:

- A public register for tied agents has been arranged in Germany which functions satisfactorily.

- We are strongly in favour of prohibiting tied agents from handling client money / financial instruments. Our members themselves manage their clients´ transferable securities, but are strictly prohibited from taking possession of such instruments. The same rule of course must apply to tied agents.

  We state our opinion to the amendments of Art. 23 of MiFID outlined under para. 187 of the consultation paper as follows:

  1. The possible scope of functions of tied agents should be restricted and well-defined.

  2. The principle of full responsibility of the investment firm employing tied agents should be maintained. This also applies to the regular monitoring of the agents´ activities.

  3. As suggested, the public register has been established in Germany ensuring good reputation, appropriate professional knowledge and ability to communicate relevant information to clients.

In short, any extension of the tied agents´ ability to handle client money and financial instruments would endanger the interests of the retail client. Tied agents should in our opinion be restricted to investment advice under strict control by the investment firm.

Part 6: MiFID Options and Discretions:

As to the issues and questions as raised under the above heading, we maintain:

- Member States should retain the power to implement non-harmonised requirements, taking into account national particularities.

- Cross-border business of our members is increasing but has not yet reached a level that would enable us to propose changes of the MiFID regime in this context.

Yours faithfully,

Klaus J. Koehler

-Legal Advisor-
VuV – Verband unabhängiger
Vermögensverwalter Deutschland e.V.