

ABI's response to the CESR
public consultation on "The
list of minimum records in
article 51 (3) of the MIFID
implementing Directive"
(ref. CESR/06-552)

27th november 2006

The Italian Banking Association (ABI) welcomes the opportunity to comment on CESR's proposed list of minimum records set forth in Article 51 (3) of the MiFID implementing Directive. ABI is also supportive of MiFID Level 3 revised priorities and timing of the specific consultations set out by CESR.

I. General remarks

1. ABI fully endorses CESR's stated objectives of (i) promoting common implementation of MiFID, (ii) fostering supervisory convergence, (iii) facilitating the provision of cross-border investment services and activities, and (iv) ensuring a common minimum basis for investor protection.

Particularly, ABI shares CESR's conclusion that drawing up a common minimum list of records for supervisors may assist in achieving CESR's objectives stated above.

2. Greater concern is the possibility that even by establishing a minimum list there is the opportunity for CESR members to "gold plate" the record keeping requirements by requiring the industry to keep records that go beyond those requested by MiFID. This potential source of inconsistency could lead to uneven levels of consumer protection and be additionally burdensome for banks, especially those with operations in more than one Member State.

Nevertheless, we recognise that without the CESR drawing up such a list of minimum requirements, the risk of inconsistency and gold plating becomes even greater so we support the principle of some form of harmonised requirements.

II. Specific remarks

Question 1: Do you agree that a common list of minimum records in all CESR members will benefit investors and industry?

The principle of drawing up a common list of records is welcomed as it provides the basis for greater harmonisation of regulatory requirements in the Member States and it may be of significant benefit for investors as well as for the industry.

Question 2: Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted for which reasons?

ABI broadly agrees with the content of the list elaborated by CESR.

In general, ABI recommends that CESR:

- clearly states the specific reference from the European MiFID texts from where the contents of the record are derived;
- considers the interaction between minimum record keeping requirements under MiFID and those that emanate from other areas of European legislation such as the Market Abuse Directive (e.g. the request to hold client identification). In such cases the record keeping requirement should be common to both Directives so that duplicitous requirements are avoided;

In particular, we draw CESR's attention to the fact that it is our understanding that a sample of such marketing communications provided to a large number of clients will be sufficient to fulfil the recording obligation.

Question 3: Do you consider that a specific requirement for keeping records of the provisions of investment advice should be introduced?
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ABI broadly agrees with the introduction of a specific requirement for keeping records of the provisions of investment advice. Such a requirement may be useful for the investment firms as well as for clients in case of any dispute on the investment advice provided.