



Winchester House,
1 Great Winchester Street
London EC2N 2DB

CESR
11-13 Avenue de Friedland
75008 Paris
France

Government and Regulatory Affairs Department
tel. +44 (20)754 10716
tillie.rijk@db.com

London, 28 May 2010

Re: DB Response to Consultation paper on Investor
Protection and Intermediaries

Dear Sir,

Deutsche Bank welcomes the opportunity to respond to your consultation paper on the "MiFID Review - Investor Protection and Intermediaries" and welcomes the fact that CESR is addressing issues that have previously been unclear.

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

In general, we feel that CESR's rationale for the proposals on voice recording is weak. Specifically, we do not agree that there will be significant benefits from "potential litigation savings made by investment firms in having irrefutable evidence to dismiss fraudulent/erroneous complaints". Nor is a convincing case made that the expenditure that firms are asked to make, is proportionate to the benefit from authorities *perhaps* being able to use recordings in enforcement cases.

In particular, for retail business we are concerned that voice recording is an intrusion upon the privacy that retail customers want when dealing with their bank. It must, therefore, be clearly justified. In our experience, it is unlikely that recording of retail customer calls would be of real value either in resolving disputes or in assisting in markets investigations. The theoretical possibility that a recording may prove valuable does not justify the proposed intrusion or cost. If the claimed potential for litigation savings was a compelling argument, we believe the industry would have voluntarily chosen to introduce taping. We therefore suggest that in its proposed rules, CESR make a distinction between retail and wholesale banking.

In both the retail and wholesale sectors, the real protection against abusive practices is provided by a combination of compliance policies and the behaviour of staff, as well as the willingness of staff to challenge and report questionable trades (as already required under existing legislation).

In the wholesale sector, voice recording may help in trade disputes, but for market abuse cases the added protection it offers is marginal. The industry practice of retaining tapes for a short period to assist on trade disputes reflects the real cost benefit calculation.

We stress that any rules on voice recording should be as unobtrusive as possible and should be based on a realistic cost/benefit assessment. In that context we are concerned that the present proposals do not properly take into account the extensive cost of the implementation of voice recording systems and the retention of tapes. As we do not feel that your cost assessment reflects actual costs, we have undertaken our own cost assessment for our wholesale business (Global Markets), which illustrates the impact of several alternative retention periods. As we would like this assessment to remain confidential, we have submitted it separately.

We do not believe that the case is made for retaining recordings for five years or more. While we understand this would be consistent with retention periods applicable to other recording requirements, we feel that voice recordings are a special category which, because of their limited use, the cost of retaining them and the potential sensitivities with regard to data protection, warrant the much shorter retention period of maximum six months. Trade disputes are generally settled within days. Six months is generally sufficient for an authority to request records or to require a firm to retain specific records for longer. An authority would normally act on a suspicion of market abuse immediately and not, for example, after several years.

Part 2: Execution quality data

DB Group has business lines on the buy-side as well as on the sell-side. The sell-side, due to its size and structure, generally has adequate access to the necessary information.

For our retail business, however, better, homogeneous and more readily available market data on shares and other financial instruments would make a positive change for the business and its clients. We would appreciate having execution data on a semi-annual or annual basis. Execution venues producing regular information on their performance against definitions of execution quality may reduce costs for clients as it will help firms to assess execution factors more easily.

Part 3: MiFID complex vs non complex financial instruments

21. Do you have any comments about CESR's analysis and proposals as set out in this Chapter?

In general, we are not convinced that the rules on complex and non-complex products achieve their objective. The complexity of a product is subjective and what one client would consider complex, another would find easier to understand. A decisive factor for the amount of investor protection clients should receive is the amount of risk he is about to take on. The complexity of a product is not necessarily an indicator of risk; the most complex products could also be the safest ones. Therefore, we would suggest CESR might consider an alternative approach which takes into account more risk based considerations.

The above notwithstanding, the current rules have now been embedded in our daily practice and we do not feel they should be amended as suggested in the consultation paper.

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?

See our response above. We would be happy to discuss this further.

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?

As we indicated above, we do not think the complexity of a product is an adequate indicator of whether or not a specific client should buy it. However, it could lead to having to introduce an extra risk category in spite of the fact that a complex product might actually carry less risk than a non-complex product. This might be misleading for retail clients who may be reluctant to buy products classified as "complex".

There would be cost and procedural implications for our business, as a larger amount of products identified as "complex" would necessitate longer and more prescriptive client conversations when providing investment advice.

The business implications might lead us to have to change distribution channels, by having to move certain to products exclusively to an “execution-only” channel.

None of the above is in the interest of retail clients, as they would receive more investor protection than necessary and at a greater cost.

Part 4: Definition of personal recommendation

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

No. The sentence would then read;

“A recommendation is not a personal recommendation if it is issued exclusively to the public”

which would be almost self-evident.

The best way forward may be to take inspiration from the guidelines in the CESR Q and A “Understanding the definition of advice under MiFID” (CESR/10-293) published on 19th April 2010, particularly paragraphs 63-66, i.e. article 52 would state that a recommendation is not a personalised recommendation if it does not use or include personal information or does not give the impression that the circumstances of the individual recipient have been considered.

Part 5: Supervision of tied agents and related issues

We feel the current MiFID regime for tied agents works well and agree with CESR’s proposals.

We trust these comments are helpful. Please do not hesitate to contact us should you have any questions.

Yours sincerely,

Andrew Procter
Global Head of Government & Regulatory Affairs
Deutsche Bank AG