

4 April 2005  
M Fabrice Demarigny  
Secretary General  
CESR  
11-13 Avenue de Friedland  
75008 Paris  
France

Dear Mr Demarigny

**Second Consultation Paper on CESR's Draft Technical Advice on Possible  
Implementing Measures of the Directive 2004/39/EC on Markets in  
Financial Instruments**

Barclays PLC is a UK-based international financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom.

Barclays has been involved in banking for over 300 years and operates in over 60 countries, including Ireland, Spain, Portugal, France, Italy and Germany. It has 76,200 employees and over 2900 branches world-wide.

For more information, about Barclays PLC, please visit [www.barclays.com](http://www.barclays.com)

Barclays welcomes the opportunity to comment on the questions posed and sets out its specific comments below.

**Chapter 1 - General obligation to act fairly, honestly and professionally  
and in accordance with the best interests of the client - lending to retail  
clients**

*Q1. Do you agree with the proposed advice in this area, including the  
proposed limitations on the scope of the obligation?*

No comments

*Q2. Do market participants consider that investment firms have to obtain the necessary information about the retail client's investment objectives in addition to his financial situation?*

No comments

## **Chapter 2 - The definition of investment advice - generic and specific advice**

*Q1. Do you believe that investor protection considerations require the application of the above conduct of business requirements from the point at which generic advice is provided or do you believe that sufficient information is provided in any event to allow the definition of investment advice to be limited to specific recommendations?*

We believe that for investor protection it is sufficient to restrict investment advice to recommendations for specific financial instruments. We can see nothing within the Level 1 advice, which would permit the inclusion of generic advice.

If generic advice was included within the definition of investment advice this could have a significant impact on the "introducers" operating within the UK. Introducers, for example staff in bank branches, identify a customer's need for financial planning, and introduce them to a financial planning adviser. If this activity were to fall within the scope of investment advice, firms with introducer staff would need to evaluate whether they wished to continue with this activity in the light of increased regulatory requirements and cost.

If firms with introducer staff decided not to continue this activity, there would be an impact on advisory firms who would no longer be receiving leads. But perhaps, more importantly, customers would not be alerted to their financial services needs, and would as a consequent not make adequate financial plans for their future.

Another factor is that not all bodies with staff that identify a customer's need for financial planning are investment firms. If such bodies were required to become authorised, this would add significantly to the regulatory burden. If however they were not required to be authorised, there would not be a level playing field between them and investment firms. So, for this reason too, we believe that generic advice should be excluded from the definition of investment advice.

*Q2. Do you believe that considerations relating to the scope of the passport and the scope of the authorisation requirements point towards the inclusion or exclusion of generic advice from the definition of investment advice?*

We are of the view that investment advice should be limited to recommendations of specific financial instruments and should not include generic advice. If generic advice were excluded from this definition, the need to passport would not apply. (also see Q1 above).

### **Chapter 3 - Best Execution**

Our general observation is that the best execution mandates would not create undue obligations on the firm. To a certain extent, we already take into account trading venues when dealing on behalf of clients, however, this is very much dictated by which instruments the client wishes to deal in. Price is also a key determination in where the firm will place the trade and multiple market makers are polled on each automatic trade.

We agree that CESR should allow firms to implement criteria in a manner which is appropriate to their business. For example, the vast majority of our client base will only be interested in speed of execution and price. This would be the main focus of any execution policy that we would have in operation and would be the main focus of monitoring or standards across the venues.

#### *Q110a-d Disclosure of execution venues and intermediaries*

We feel it is unnecessary for CESR to provide specific level 2 advice regarding the type of information to be provided. Such a degree of prescriptiveness is simply not required and is unlikely to prove useful for the retail client when considering a firm's future performance and strategy.

#### *Q126a. How might an investment firm gain the necessary consents required under Article 21(3) of the Directive as part of a voice telephone communication?*

Barclays Stockbrokers already obtain various consents from clients via telephone communications. We do not see the need to change current processes to capture consent to execution only policies.

#### *Q126b. What impact would there be on cross-border business and distance marketing if investment firms are not permitted to obtain the client consents required by Article 21 using voice telephone?*

No comments

#### *Q126c. Can respondents suggest a different approach than the one used in paragraph 5 of the advice under Article 19(3) that would permit investment firms operating via voice telephone to satisfy the objectives of Article 21's*

*consent requirements?*

Consent on a general basis could be obtained at client take-on by the client signing a declaration that they agree to the execution policy operated by the firm. This could be part of the application process at the start of the client relationship.

*Q126d. How might firms evidence that they had obtained client consent if they obtained that consent via voice telephone?*

MIFID already asks that firms retain records of telephone conversations for a period of 1 year. This should be sufficient.

#### **Chapter 4 - Market Transparency**

Article 27 and the definition of Systematic Internalisers have a potential massive effect on how retail clients will trade.

The treatment of RSPs has yet to be spelt out categorically and whilst the higher level definition of liquid shares (£1billion turnover) should ensure this applies to only 50-150 UK stocks they will of course be the most actively traded. Anything that catches RSPs as internalisers would, we believe, mean no price improvement for orders under retail size, now defined as £7500.

Please do not hesitate to contact me if you have any queries, or require any further information.

Yours sincerely

Brian Harte  
Director, Barclays Head of Compliance & Regulatory Affairs