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Re: **MiFID Review - Investor Protection and Intermediaries**

The Bank and Insurance Division of the Austrian Federal Economic Chamber representing the entire Austrian Banking Industry appreciates the opportunity to comment CESR's Consultation paper on MiFID Review – Investor Protection and Intermediaries:

Requirements relating to the recording of telephone conversations and electronic communications

General remarks

The Austrian banking industry is strongly in favour of keeping the discretion in Article 51 (4) of the MiFID Level 2 Directive unchanged and left to the Member States to decide on whether or not to provide for the mandatory recording of telephone conversations.

We don't consider it necessary to record **all** telephone conversations to achieve the targets mentioned by CESR, especially under cost benefits aspects. Costs resulting from the recording obligation would be extremely high, especially in the light of the strongly fragmented nature also of the Austrian market on the one hand, on the other hand there are no relevant abusive practices known in Austria. Furthermore the Austrian Financial Market Authority (FMA) does not see relevant added value in a binding record obligation too. The introduction of binding rules could lead to a situation that smaller and/or decentralized operating banks would in future no longer be able to offer investment counselling services and order placements via telephone to clients across the whole area in which they operate.

We additionally, doubt that retail client orders have a market abuse potential justifying such measures. The argument that voice recordings would make it easier to present evidence in disputes between investment firms and their clients is, in our view, no reason to justify such measures either.

Regarding the associated implementation and maintenance costs, the question arises as to proportionality. A requirement of this kind could only be judged proportionate in the absence of a milder, yet equally effective method of achieving the same regulatory objective. Written records, seem to be also adequate means of documenting orders.

II. Questions

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

We reject mandatory voice recording costs, throughout the EEA. The costs for the recording equipment alone would cause enormous additionally operational costs would be high too. Mandatory requirements would it make impossible for smaller and/or decentralized operating banks to offer investment counselling services and order placements via telephone to clients across the whole area in which they operate.

Telephone conversations between traders have to be recorded in Austria too.

Regarding the associated implementation and maintenance costs, the question arises as to proportionality. A requirement of this kind could only be judged proportionate in the absence of equally effective method of achieving the same regulatory objective. We believe that written records are an adequate means of documenting orders.

It is also argued that recordings would help to detect and deter market abuse. We do not believe that significant instances of market abuse would be identified among orders placed at smaller branches for example.

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?

We would it consider appropriate to differentiate between conversations with or between traders on the one hand and conversations between clients and branches on the other.

5. Do you agree that firms should be restricted to engaging in conversations and communication that fall to be recorded on equipment provided to employees by the firm?

In this context data protection and privacy issues would have to be solved.

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.

However, recordings of trading desk conversation appears to be sufficient; duplication – also at the portfolio manager's end – is not necessary.

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.

Those exemptions from the requirement cannot solve the problems mentioned before.

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.

Disputes concerning investigations into market abuse and miscommunication do not normally begin after a time lag of several years, the retention period should thus be much shorter. We suggest requiring records to be kept for a period of 1 year.

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.

Data protection issues, for example, have yet to be addressed.

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

We are of the opinion that the costs of the measures proposed would be out of proportion to the benefits assumed such a requirement would deliver.

12. What impact does the length of the retention period have on costs? Please provide quantitative estimates where possible.

The length of the retention period would have an impact on the need for storage space, on administrative costs and on the cost of securing the data (making backups).

Yours sincerely,

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