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IRISH ASSOCIATION OF INVESTMENT MANAGERS

Response to CESR's Consultation Paper Ref CESR/05-163: CESR's Final Consultation on Best Execution and Transparency Requirement under the MiFID

Dear Sirs,

I am writing on behalf of the Irish Association of Investment Managers, which is the representative body for institutional investment managers in Ireland, to express our views on the above consultation paper.

We very much welcome the opportunity to outline our position in relation to the draft technical advice as set out in the above consultation paper.

Q.2 (Page 7) **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?**

We would broadly agree with this approach. However, in the event of a client being unable to provide or refusing to provide any information either on his knowledge and experience, his financial situation or its investment objectives, we would suggest that this should not be a barrier to the firm placing the client into an investment solution which would represent an appropriate risk profile for the average client. Further, we would propose that the fact that a client has no prior investment experience should not be a ban on his receiving professional investment advice. It should not be a requirement for the client to have experience in the type of investment being recommended to him by the firm. Indeed, if this were to be a requirement, it is difficult to envisage how an investor may obtain such experience in financial products. Also, there should be no requirement to obtain a trading history from the client prior to the firm providing the advice. We would also suggest that execution only business should be exempt from any requirement to obtain information from any potential client.

Q.1 (Page 11) 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 protection is provided in any event to allow the definition of investment advice to be limited to specific recommendations?

We believe that investment advice of a generic nature should not be treated as investment advice. We believe that investment advice only becomes such when it is specific in nature and is geared towards a particular investor. However, it is possible that in certain instances generic advice could be deemed to be investment advice particularly in a situation where an investment firm has only a single investment product and this issue may need to be addressed in the final definition of investment advice.

We trust that these comments are useful to CESR in finalising its advice and would be happy to provide any further assistance and comment if required.

Yours Sincerely,

Enda McMahon
Chairman, Regulation and Compliance Committee
Irish Association of Investment Managers