



AP –n°2726/Div.

Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 31 May 2010

**AFG response to CESR Consultation Paper
“MiFID Review – Investor Protection and Intermediaries”**

The Association Française de la Gestion financière (AFG)¹ is grateful for the opportunity to comment on CESR consultation paper, in the context of the MiFID review.

I. Requirements relating to the recording of telephone conversations and electronic communications

We agree with CESR’s proposal that portfolio managers should not be included in recording requirements. We also support the opinion it is not appropriate to include investment advice in the scope of these requirements.

But, as EFAMA, we consider that orders relating to investment fund subscriptions and redemption orders should be clearly exempt from recording requirements, as they do not raise market abuse issues and recordkeeping is already required. In particular, the transmission of orders from final distributors/intermediaries to regional or global distributors part of the fund distribution chain (often MiFID-licensed firms belonging to the same group as the fund

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups. AFG members are managing 2300 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1300 billion euros managed from France, i.e. 23% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Investment Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

management company) should be exempt from such requirements, as it neither entails any direct contact with investors, nor it can give rise to market abuse. In case of fund unit orders received directly from investors by a fund-related MiFID entity (a very small number, as fund distribution is mostly intermediated in the EU), conduct of business rules already apply, as well as recordkeeping for five years. Telephone recording should therefore be optional for the MiFID entity, particularly if direct orders represent a very small part of all fund orders (proportionality should be applied).

We also disagree with CESR's view that investment firms would need to keep the records for at least five years, because we believe that in these situations if disputes arise with investors, it would happen quickly, within 6 months. Therefore, we suggest the record retention period should be limited to 6 months.

II. Execution quality data

It is clear that investment firms need to make effective decisions on venue selection, to have accurate and regular data, but taking into account the risk of a potential rise in data procurement costs. The difficulties for investment firms to have adequate information may vary depending on their commercial weight.

This requirement must particularly focus on crossing networks and dark pools. Moreover we're not sure to understand the position that it's not time to make proposal for financial instruments other than shares.

III. MiFID complex vs non complex financial instruments for the purposes of the Directive's appropriateness requirements

We strongly support the view that UCITS should continue to be categorized as non-complex. As EFAMA, we also consider that a partial exclusion from the definition of non-complex instruments of some UCITS on the basis of underlying investment strategies or techniques would create serious problems for distributors and advisors, as they in turn would require detailed information on such strategies and techniques (for example on the use of derivatives), information which is not always available to the public and certainly not on a timely basis. A distinction among UCITS on the basis of risk differentiation would require the same treatment for all financial instruments, a very complex undertaking, as the KID risk/reward indicator discussion has shown.

IV. Definition of personal recommendation

We do not perceive a real need for the investor protection to remove "through distribution channels" from article 52 of the MiFID Level 2. Furthermore, we stress that such a modification will impact the definition of investment research (given in Article 24 (1) (b) of the MiFID Level 2). As EFAMA, we believe that investment research provided to investment managers (even if they are clients) should not be considered as advice due to the change in Article 52.

V. Supervision of tied agents and related issues

We have no specific comments.