

**VERENIGING VAN COMMISSIONAIRS  
IN EFFECTEN**

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CESR

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Amsterdam, 17 September 2004

Re: Reaction CESR Directive 2004/39/EC

Dear Sirs,

Following please find the response of the Association of Dutch Brokers on CESR's advice on possible implementing measures of the directive 2004/39/EC on markets in financial instruments.

Headlines:

1. The effect for the smaller brokers and investment managers is absolute and relatively very high. The costs of implementation are very high which will result in the need for more independent compliance/audit/control assistants. This will be killing for the smaller companies and the barrier to start a new business in the financial industry for smaller companies could become too high.
2. The implementation of these new rules in the Netherlands have to be embedded in the Wfd separately. For acceptance of these rules there has to be a link to the new Wfd. A

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level playing field to other financial parties is necessary. Our community will not accept not having a level playing field with other financial parties.

3. The bureaucracy in the Netherlands reaches the highest levels of Europe. Acceptation of these rules will lead to a further growth of bureaucracy. The decrease of at least 25% of the administrative costs as promised by the Ministry of Finance is not more than a farce.

The Association of Dutch Brokers has the following points:

### **Compliance**

It is not acceptable to create an independent compliance function for smaller companies. Such a function only justifies when there are more activities (brokerage, asset management and corporate finance), a complex structure and a company with more than say 25-30 people.

Remuneration independent from the commercial business for small companies is not acceptable. There is always a link to the performance of the company as a whole, thus with the commercial aspects. Necessary is that a compliance officer has a direct link to the CEO. When there is a major problem there has to be a link to the Board of Directors.

### **Outsourcing**

The Board of Directors is always responsible. If outsourcing is the case the facilities have to be created to carry this responsibility. Too much detail only leads to more bureaucracy.

### **Record keeping**

Question 4.1: it is not acceptable for an investment firm to demonstrate that it has not acted in breach of the conduct of business rules under the Directive.

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Voice logging is for protection of the investment companies themselves, not for helping authorities. In other areas of the economy it is never an issue. Please note that there is a rule that in future all other financial parties in the sector must have voice recorders to get the level playing field.

### **Safeguarding of client assets**

The new rules lead to less protection of the Dutch investors.

### **Conflict of Interest**

Our opinion is that the clients have to know which conflicts of interests can occur. The investment company has to make clear to the clients which activities and which potential conflicts there are.

For small companies it is impossible to have barriers to all functions. There has to be a segregation for professional trading (including acting for the own account) and non-professional business for execution and reporting.

It is unacceptable to separate the research from the brokerage business. A barrier between the credit department or the corporate finance business with the brokerage department is acceptable.

We don't see the results of the discussions about the Directive of the Dutch AFM with regard to research reporting. This should be the case.

### **Reporting to clients**

It is necessary that a client can evaluate the performance of his or her activities with regard to the asset management activities of the investment firm. Not necessary is that he or she knows the realised results of the closed individual trades. He or she has to know the total results (realised and unrealised).

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### **Best execution**

The client has to know to which platforms the trades will be executed. It is not a duty of the broker to show all possible execution prices at that time. Clients need the possibility to check the best prices.

### **Client order handling**

Segregation of own-account business from professional customer business is not acceptable for brokers.

The professional clients make the assumptions for their orders. It is the broker's choice to accept these requirements. If they show good execution the broker will have a bigger part of the market. If not, the professional party will not do business anymore.

### **Markets**

No comments.

### **Controlling the implementation by the different memberstates**

Every single regulator will control the regulation in their own country. How is the level playing field guaranteed?

Yours sincerely,

J. Stam  
Chairman

cc. Ministry of Finance