



STATE STREET

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Committee of European Securities Regulators
11-13 avenue de Friedland
F-75008 Paris
France

Consultation Document – CESR Technical Advice to the European Commission in the context of the MiFID Review – Client Categorisation

Dear Sir/Madam:

State Street Corporation (“State Street”)¹ appreciates the opportunity to comment on the consultation document issued by the Committee of European Securities Regulators (“CESR”) regarding client categorization as part of its advice to the European Commission (“Commission”), in the context of the review of the Markets in Financial Instruments Directive 2004/39/EC (“MiFID”).

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union (“EU”), State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$19 trillion in assets under custody and administration, as well as \$1.9 trillion in assets under management, we operate in 25 countries and more than 100 markets worldwide.² Our European workforce of over 6,500 employees provides services to our clients from offices in ten EU Member States.

CESR’s consultation addresses the issue of client categorization as part of the Commission’s request for advice related to conduct of business rules. More specifically, CESR consults on whether distinctions should be made between regulated entities for the purposes of determining which clients are to be treated *per se* as professional clients. Furthermore, CESR requests comments on whether it is necessary to clarify whether local authorities/municipalities can be treated as public debt bodies. Lastly, CESR asks

¹ State Street’s identification number in the European Commission’s Interest Representatives Register is 2428270908-83.

² As of March 31, 2010.

whether tests of knowledge and experience should be used more widely for client categorization purposes.

State Street welcomes efforts to review and improve MiFID, including by ensuring that its client categorization provisions meet the realities of today's financial markets. We have, however, some concerns regarding the suggested categorization of local authorities, which would under CESR's proposal not automatically qualify as professional clients. In addition, we have reservations regarding the recommended use of assessments and tests by investment firms to gauge an entity's level of knowledge and experience.

As a result, we recommend the introduction of a threshold system derived from the size requirements that apply to large undertakings, above which local authorities would automatically qualify as professional clients. Furthermore, State Street does not support the introduction of a mandatory assessment of *per se* professional clients' knowledge and experience, since we believe that ensuring an appropriate level of knowledge and experience is each entity's direct responsibility rather than that of the investment firm.

Classification of local authorities

State Street notes CESR's arguments justifying the suggested clarification that local authorities do not fall within the scope of public bodies that manage public debt, and therefore do not qualify as *per se* professional clients. We do not agree with this approach as it does not take into account the vast diversity amongst local authorities in terms of size, knowledge, experience as well as investment needs and activities. Indeed, the recommended approach is, in our view, far too rigid and is not justified by current market realities.

In State Street's view, the introduction of a threshold system would be a much more workable solution. Local authorities below such a threshold would not automatically qualify as professional clients. Local authorities above the threshold would, however, fall into the category of "public bodies that manage public debt" in Annex II.I (3) MiFID and therefore qualify as professional clients. These larger authorities would nonetheless still have the ability to request non-professional treatment in appropriate circumstances, thereby resulting in a higher level of protection. In our view, such an approach would deliver both the desired clarification and adequate levels of investor protection and flexibility.

State Street therefore recommends amending Annex II.I (3) MiFID to specify that "public authorities managing public debt" include local authorities, provided that they exceed a given threshold. In our view, the size requirements for large undertakings in Annex II.I (2) MiFID could serve as a basis for such a threshold. Furthermore, Annex II.II.1 MiFID would need to be amended to include all local authorities below the new threshold.

We acknowledge that the calibration of such a threshold may require further analysis and State Street stands ready to contribute to this process as may be helpful.

Other client classification issues

In its consultation, CESR recommends that investment firms be required to assess the knowledge and experience of certain entities and large undertakings before they can be considered *per se* professional clients under MiFID.

State Street acknowledges CESR's concerns, and also shares the objective of ensuring adequate levels of investor protection. We believe, however, that the suggested assessment is inappropriate. Currently, Annex II.I of MiFID provides protection and flexibility by allowing *per se* professional clients to request non-professional treatment, and therefore a higher level of protection, when they deem themselves unable to properly assess or manage the risks involved. Furthermore, it is the responsibility of each entity to ensure that it has well-qualified and experienced staff, together with appropriate internal processes. Such responsibility cannot and should not be placed upon the investment firm. Of course, if in its interactions with an entity, an investment firm has concerns regarding the suitability of the professional status for one of its clients, it should express these concerns and suggest a higher level of protection. However, a mandatory general assessment of *per se* professional clients' knowledge and experience would be inappropriate and create unnecessary burdens for investment firms.

State Street therefore recommends maintaining the current regime by ensuring that *per se* professional clients assume their responsibility for adequate levels of resources, knowledge and experience, or otherwise request a higher level of protection as afforded by MiFID.

Thank you once again for the opportunity to comment on the important matters raised within this consultation. To summarize, State Street recommends the introduction of a threshold system based on the size requirements for large undertakings above which local authorities would qualify as *per se* professional clients, while at the same time clarifying that bodies falling below the threshold automatically fall within the scope of Annex II.II.1 of MiFID, with the existing option to ask for non-professional treatment. In addition, no mandatory assessment of professional clients' knowledge and experience should be introduced. Instead, the current regime should be maintained.

Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Sincerely,



Stefan M. Gavell
Executive Vice President
Head of Regulatory and Industry Affairs