



Association of British Insurers

**Committee of European Securities Regulators: Call for Evidence  
(Ref CESR/04-323)**

**Formal Request for Technical Advice on Possible Implementing  
Measures on the Markets in Financial Instruments Directive (Directive  
2004/39/EC)**

**Response from the Association of British Insurers**

The Association of British Insurers (ABI) represents the collective interests of the UK's insurance industry. The ABI has around 400 companies in membership. Between them, they provide over 97% of insurance business in the UK. ABI member companies account for almost 20 per cent of investments in the London stock market.

Although ABI members are insurance companies and are not covered by the Directive, many of them have subsidiary firms that will be covered by the Directive. The collective investment fund industry in the UK is worth around £250 billion. ABI members account for around half of this.

Insurers are also concerned that firms of advisers who offer insurance products under the Insurance Mediation Directive as well as investment products under the Markets in Financial Instruments Directive should not face conflicting demands.

The ABI has comments on the following issues:

**3.2: Definition of “Investment Advice” (article 4.4)**

On the definition of investment advice, our only comment is that in the UK “tied agents” may also give a personal recommendation, even though the recommendation would relate only to one or more of the products offered by the product provider. It may be helpful for CESR to consider the options available under article 12.1(e) of the Insurance Mediation Directive.

**3.3 Conduct of business rules (article 19)**

In developing recommendations, CESR should take account of the requirement in article 19.10 that the implementing measures for article 19 should take into account the nature of the service offered or provided, the nature of the financial instruments, and the retail or professional nature of the client.

In doing this, CESR will need to take account of the variations in the nature of services, instruments and clients within each member state in order to ensure that the recommendations do not require changes to the existing market that are not justified by consumer protection.

### **3.3.1: General obligation to act fairly, honestly and professionally and in accordance with the best interests of the client (article 19.1)**

Under UK regulation, the Financial Services Authority has established eleven principles for business<sup>1</sup>, which provide a general statement of the fundamental obligations of firms under the regulatory system. In developing its advice, we suggest that CESR should follow this approach rather than proposing detailed rules to cover all circumstances.

#### **3.3.2.1: Suitability Test (article 19.4)**

In developing its technical advice, CESR should take account of the fact that Commission's mandate calls for advice on how to define the criteria for assessing the *minimum* level of information that should be obtained from the client. CESR should not seek to determine exactly what information should be obtained in each case, nor the methods by which the information should be obtained.

The criteria should be capable of applying to the full range of products and services that may be considered. This should include cases where advice is provided in respect of simple products with standardised features established by market practice or government regulation.

Similarly, on the criteria for assessing the suitability of the investment service or instrument, CESR should provide draft advice that covers the range of circumstances in which advice might be provided. According to the definition of investment advice under article 4.4, this may cover a recommendation to purchase a single product or a full service of financial planning and asset allocation.

#### **3.3.2.2: Information about the client knowledge and experience in the investment field (article 19.5)**

In developing the technical advice for article 19.5, CESR should follow the principles outlined for article 19.4, but the criteria should reflect the fact that (a) a narrower range of information has to be obtained in this case, and (b) the article refers to the "appropriateness" rather than the "suitability" of the service or product.

On the content of the related warnings, we suggest that CESR's advice should follow the text of the second and third subparagraph as closely as possible. Members of CESR will be able to provide information on the warnings that are already used in member states.

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<sup>1</sup> Available at <http://www.fsa.gov.uk/vhb/html/PRIN/PRIN2.1.html>

### **3.3.2.3: Execution only (article 19.6)**

In developing advice on the criteria for determining what is to be considered a non-complex instrument, CESR should take into account the extent to which instruments follow a standardised design, whether provided by industry initiative or government regulation.

On the criteria for determining when a service is provided at the initiative of the client, we confirm that CESR should have regard to recital 30. In particular, CESR should consider carefully the distinction between a “personalised communication” and a communication “addressed to the public or a larger group or category of clients or potential clients”.

The advice should make clear that a communication is not a personalised communication merely because it is addressed to an individual – such personalisation would be necessary simply to ensure that it reached the potential customer through the post or by email.

The advice should also make clear that firms are permitted to address their promotions to groups or categories of clients or potential clients on the basis of their previous purchases or information that the company already holds about them. This should be permitted as long as it is clear that the communication is not directed to a particular individual and cannot reflect all their circumstances.

On the content of the related warnings, we suggest that these should follow as closely as possible the warnings under article 19.5, in order to improve consumer understanding.

### **Association of British Insurers**

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