

**REPLY BY THE CNMV ADVISORY COMMITTEE TO THE CESR PUBLIC  
CONSULTATION REGARDING THE LIST OF MINIMUM RECORDS FOR  
INVESTMENT FIRMS**

**Question 1.- Do you agree that a common list of minimum records in all CESR members will benefit investors and the industry?**

We consider that the establishment of standards for practical implementation of MiFID by firms in the various jurisdiction is positive insofar as it contributes to more uniform application of the regulations.

In particular, regarding the list of obligatory records to be kept by investment firms and credit institutions (hereafter "firms"), the new obligations in this connection created by MiFID and its implementing regulations make it particularly useful for CESR regulators to have a common approach in this area.

**Question 2.- Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted and for which reasons?**

We believe the list is broadly appropriate, but we have the following comments:

- (i) Investment firms are evidently obliged to keep other records apart from those listed in the CESR documents. These are records required by specific regulations, such as those governing accounting, prevention of money laundering, personal data protection, etc. Consequently, if a list of minimum obligatory records is established by the regulators, it should be made clear that it is purely for the purposes of article 51 (3) of Directive 2006/73/EC and has no bearing on record-keeping obligations established by other regulations, which will continue to apply in any case.
- (ii) Keeping the obligatory records should always be understood in the terms of article 51 (2) of Directive 2006/73/EC in that what firms are obliged to do is:(i) keep the corresponding information, and (ii) have the mechanisms to make it accessible in a reasonable time. Accordingly, the aim is not to oblige them to create formal records for each of the cases enumerated in the Annex. On that basis, the proposal attains the goals pursued by the Directive while limiting the cost to firms as far as possible.
- (iii) It is not clear that firms should be required to keep the following as obligatory records:
  - a. Periodic statements to clients. Keeping such a record may be costly if the statements must be kept on paper, and more so if an electronic is required of communications that were originally sent out on paper. Also, it does not appear that the Directive would require these records to be obligatory.
  - b. Marketing communications. Although it may be prudent for firms to keep a copy of the marketing communications they produce, requiring them to keep a copy of every communication ever sent, indicating who it was sent to, would be excessively costly without

providing evident matching benefits. Moreover, the Directive does not appear to require such records to be kept obligatorily.

- c. Records of the firm's business and internal organisation. It is not clear what this specific record would contain. Article 5(1) of the Directive establishes that firms must "maintain adequate and orderly records of their business and internal organisation". This appears to be a general precept whose specific requirements are already met by other obligatory records such as: (i) records of orders, execution and transmission, as regards the firm's "business", and (ii) records of staff transactions and reports on the firm's independent functions (compliance, risk control, internal audit), as regards the firm's internal organisation. Therefore, these records can be considered to be redundant.
- d. Compliance policies and procedures. Compliance policies and procedures are approved by firms' Boards of Directors. This provides sufficient assurances regarding the existence and maintenance of the documents. Accordingly, it does not seem logical to require firms to subject these documents to principles of record-keeping (tamper-proofing, change logs, etc.) which are designed more for electronic documents than for documents that, in any event, are contained in the minutes of each entity's Board of Directors.

**Question 3.- Do you consider that a specific requirement for keeping records of the provision of investment advice should be introduced?**

Requiring that records of this type be kept does not appear to provide any clear benefit at this point. The reasons are as follows:

- (i) Investment advice may be given to clients by a range of means (face-to-face, telephone, electronic, paper, etc.) and in very varying situations (during order execution, under a portfolio management contract, etc.). Consequently, it does not seem feasible to provide an all-encompassing record of this activity, and the benefits of keeping a less-than-complete record are not at all clear.
- (ii) The classification of investment advice as an investment service (which is new in Europe) raises such questions as how the provision of this service is to be structured between firms and clients, and how records could be kept in certain cases. Until these issues are defined, it is not clear what the content of an investment advice record would be.
- (iii) Moreover, if the advisory relationship is expressed in a contract, that would be contained in the record of client contracts and it would not be necessary to create an additional record for investment advice.