

CESR
Committee of European Securities Regulators
11-13 Avenue de Friedland
F-75008 Paris

Copenhagen, 2 June 2010

CESR Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries
CESR/10-417.

Danish Shareholders Association is the organisation representing private investors in Denmark.

The MiFID Review

Danish Shareholders Association, DAF, finds that the Consultation Paper from CESR on Investor Protection and Intermediaries is a very useful contribution to the MiFID Review, but very important points are missing seen from the point of view of the private investor (the consumer).

“The MiFID exercises”, i.e. classification of clients, suitability test, appropriateness test have been overshadowing what investor protection is about.

Investor protection is: Unbiased, documented advice from competent and knowledgeable intermediaries based on all investment options.

Our experience is that consumers are handled by salesmen and not by advisors. The salesmen have a limited knowledge of the products they sell and their recommendations are often based on weekly lists from head-office and not on the classification of the customer and a suitability test or appropriateness test.

The MiFID exercises tend to be empty time-consuming activities.

The needs of the investor

Investors trust by tradition their bank or investment firm (for short “bank” in the following). They expect the bank personnel to know everything about their economy and engagements with the bank and they accept as advice whatever the so-called advisor says.

The revised MiFID should together with PRIIPs establish better frames for a decent treatment of consumers as investors.

Quality of the advisor

The key to decent treatment is the bank personnel. Investment advisors must have a better education than today. They should be certified and the quality of their work should be supervised.

An advisor must be able to explain about:

- The financial product
- Risks related to the financial product
- Costs related to the investments in question
- Other obligations than the immediate costs
- Exit possibilities and costs and disadvantages related to exit
- The expected advantages of the product
- All “substitute” investment alternatives or options

The advisory session must end up with a summary of the options considered, the background (including the client situation), the advices given and the decisions made. That summary must be on paper or other durable medium.

Recommendations from an advisor must be unbiased and in the interest of the client.

Advisors must be monitored and supervised. If they are not acting as genuine advisors their certificates should be recalled and the persons should be given other tasks or retrained.

Inducements

All inducements should be disclosed and justified.

The information shall be in clear language and understandable.

The purpose of the disclosure shall be to make it possible for the retail client to make his own assessment: Can this inducement affect the bank or my contact person at the bank so that I can't be sure they will act in my interest?

Questions from CESR

Recording of telephone and electronic communications

Recording of telephone and electronic communications including e-mails and spoken or written communications from mobile devices should be harmonised.

It happens too often that consumers in a conflict with a bank are unable to lift the burden of evidence about the information or the advice she was given before the investment decision.

All phone conversations should be recorded and all meetings should be documented on paper or other durable medium. The recordings and documents should be kept for at least 5 years.

Execution quality data

Trade in shares and bonds are increasingly carried out in de-facto-segregated trading venues.

Firms must have available data about prices, costs, volumes, likelihood of execution and speed across all trading venues in order to make effective decisions about venue selection.

But execution quality data will not give the same information for small investors and professionals. Trades for small investors (consumers) and trade for professionals (banks, investment funds, institutional investors) are carried out on different conditions.

Execution quality data cannot alone determine which venue to choose to carry out an order.

A consolidated ticker with post-trade information from all markets would improve the investor's chances of creating a coherent picture of the market and as a consequence improve the quality of the market

Complex – non complex financial instruments

In the years up to the financial crisis have many financial instruments been marketed and sold as non complex. During the crisis have many instruments been exposed as being complex.

In a number of cases has it been realised that the persons recommending and selling so-called non-complex products in banks were unable to explain the products.

We have also seen that the liquidity disappeared in some market segments.

The lesson of this is that we must be more careful with the distinction between non-complex and complex.

One major point is that the market quality must be taken more into account when deciding complex or not. Markets that can dry out will point to complex.

Other exit restrictions must also be taken into account.

All financial instruments must be carefully scrutinised when it comes to non-complex versus complex. Article 38 of the MiFID Level 2 Directive should be applied to more instruments than today. That goes for collective investments and mutual funds and even for UCITS.

Products or instruments not covered by MiFID should be covered by the same type of rules. That goes e.g. for deposits, mortgages and life insurance products.

Definition of personal recommendation

DAF supports the proposal that the words “through distribution channels or” should be deleted from article 52 of the MiFID Level 2 Directive.

Kind regards



Charlotte Lindholm
CEO

Dansk Aktionærforening
Danish Shareholders Association
E-mail: charlotte@shareholders.dk