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Comments on CESR's Draft Technical Advice on Possible Implementing Measures of the Directive on Markets in Financial Instruments (CESR ref: 04-562)

The Danish Consumer Council has received the CESR's draft advice regarding the Directive on Markets in Financial Instruments and has the following comments:

Article 4: Definition of "investment advice"

Regarding the definition of "investment advice" the Danish Consumer Council recommends that the advice to the Commission does not include the word "specific".

The Danish Consumer Council believes that advice in asset allocation should be considered in the same way as advice in specific financial instruments. In the example mentioned in the draft it is recommended that 30 per cent of the assets are invested in stocks and 70 per cent are invested in bonds. It would however be possible to recommend the same asset allocation, only that the advice regards specific mutual funds. If the word "specific" is included, the two pieces of advice will be regulated by two different sets of regulation.

The Danish Consumer Council considers that it is a major problem that it is so difficult for the European consumers to find independent investment advice. The European consumers need a regulation which calls upon investment advisers to deliver advice independently of their commission before an internal market can be a reality. Therefore the legal basis should be the same in asset allocation and in specific financial instruments.

Article 19(4): Criteria for assessing the suitability

The Danish Consumer Council finds it important that an Investment Company must be sure that the client understands the consequences of the advice received. The only person to pay for the potential

losses caused by the investment advice is the client, and therefore the Danish Consumer Council finds that the criteria for assessing the suitability must include "understanding of consequences".

Article 19(6): Execution only

The Danish Consumer Council shares the views reflected in the draft advice.

Article 27: Systematic Internaliser

The Danish Consumer Council does not agree with the view that there is no purpose of prescribing how a price reflects prevailing market conditions. The Danish Consumer Council agrees that the quotes must reflect the quotes in comparable markets, but finds that more exact requirements are required to protect the retail investor. Otherwise the authorities will have to base their supervisory control on a discretionary assessment which does not necessarily favour investor protection.

The Danish Consumer Council sees absolutely no reason why professional investors should be allowed to get better prices than retail investors if the sizes are the same. Therefore the Danish Consumer Council supports the view of some CESR members that in order to avoid discriminatory treatment the size undertaken by a retail investor should reflect the highest size of retail trades.

Best regards

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