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Comments from Danish Shareholders Association to CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments on Aspects of the definition of Investment Advice and of the General Obligation to Act Fairly, Honestly and Professionally in the Best Interests of Clients, on Best Execution and on Market Transparency. Ref.: CESR/05-164

Danish Shareholders Association is the organisation representing private shareholders in Denmark. Our comments to the Draft advice are concentrated on questions of paramount importance to private citizens in their capacity as investors. Questions aimed at investment firms are not necessarily commented.

General Obligation to act fairly, honestly and professionally and in accordance with the best interest of the client (Article 19(1)) – lending to retail clients.

Question 1:

We do agree with the general approach of the proposed advice.

But we find the limitations questionable.

The important point is to protect the interests of the client. To cover late payments etc. as in 2(a) and settle transactions in standard securities or instruments will normally be in the interest of the client and of the market too.

But to cover a margin call (2(b)) can be a different thing. It can be in the interest of the client not to answer the call. And at the same time it can be in the interest of the investment firm that the client gets a loan/credit so that other persons do not get the information that the client cannot or will not honour the call.

Question 2

Investment firms must obtain the necessary information about the retail client's investment objectives in addition to his financial situation.

The problem is that retail investors often have problems interpreting the deeds of the investment firm. When a client is buying and selling securities via an investment firm, and the firm grants him a loan or a credit, then he is convinced the investment firm has approved his total strategy because the investment firms knows everything about his economic situation.

The definition of investment advice (Article 4(1)(4)) – generic and specific advice

Trust is the keyword between investment firms and their clients. Private clients trust the investment firm they use. Experience shows that this trust often goes beyond what is reasonable. Investment firms do their utmost to maintain this trust. The good and honest firms do this by behaving in the best interest of their clients. The bad companies do this by aggressive sales approach and lots of empty words and promises.

Private clients cannot understand the difference between generic and specific advice. They misinterpret general information (and sales talk) as investment advice. The people working in the investment firms are obliged to sell more and more if they want to keep their job and their economic situation, so they are happy when the client makes transactions - based on investment advice, on specific information, or on generic information. It is not the intention of decent people working for a decent firm to misinform the client. But they have an economic advantage when the client buys and sells, and when the firm provides the client with a loan or a credit.

Question 1

Advice provided by an investment firm (banks, brokers etc.) should always be considered an investment advice. Clients and investment firms will never have a clear common understanding of which information is an information advice, and which is not.

The exchange of information between the investment firm and the client opens on the generic level moves to the specific, and a few seconds later the client is the proud owner of a handful of shares.

Question 2

Firms or persons not engaged in buying and selling securities or receiving orders from clients shall have the possibility to provide individuals or the general public with

information and advice on securities and investment strategies without having to obtain a passport.

Newspapers, specialised magazines, information services on paper or electronic, analysts, journalists and consultants shall have the right to give information and advice both generic and specific provided that their activities are not in any way linked to the possibility of buying and selling securities or giving binding requests.

Best execution (Articles 19(1) and 21)

The questions are to a large extent directed to investment firms and intermediaries. So our comments are of a general character.

To the private investor the important issue regarding costs is the total costs. The total costs should preferably be expressed in one figure.

If the investment firm gets incentives in cash or in kind, it should be reflected in the total costs.

As far as other qualities of the execution are concerned, the private client finds speed and reliability very important.

The private client has a general interest in knowing the principles applied by the investment firm.

It is difficult for private investors to choose between investment firms based on best execution, because private investors can't test different suppliers the way a professional investor can. So private investors have to make their choice based on the information they can get on the company's policies and the experience they obtain as clients.

In the worst case, i.e. bankruptcy, private clients ask questions about investors or depositors guarantee scheme. But too often they start posing questions after the investment firm is in receivership. It is important private investors learn to ask questions already when everything looks fine and the sky is blue. It is a must that investment firms give full information on the risks private clients run. If different execution strategies carry different elements of risks for the clients, this should be stated explicit to the clients up front.

Error correction policy, as mentioned in paragraph 115, is of increasing importance with use of on-line client systems.

Market Transparency

1. Definition of Systematic Internaliser (Article 4)

Question 1.3

The quantitative measures should in some cases be applied to client or product segments. It is possible that an investment firm executing all orders from institutional investors in the regulated market and all orders from private clients via internalisation will have a high percentage of its orders executed in the regulated market, but in relation to private clients the notion will be internalisation.

2. Pre-Trade Transparency requirements for regulated Markets (Article 44), MTFs (Article 29) and Systematic Internalisers (Article 27)

No comments relating to the proposed definitions.

3. Post-Trade Transparency requirements for Regulated Markets (Article 45) and MTFs (Article 30) and for Investment Firms (Article 28)

Question 5.2

We agree, that the responsibility for publishing the post-trade information lies on the seller in case of trades made outside RMs and MTFs.

4. Transactions large in scale compared to normal market size

No comments

5. Publication of transparency information (and consolidation)

No comments

Yours sincerely
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