

**EFAMA'S REPLY TO CESR'S CONSULTATION ON THE LIST OF
MINIMUM RECORDS IN ARTICLE 51(3) OF
THE MIFID IMPLEMENTING DIRECTIVE**

EFAMA welcomes CESR's consultation and is in favour of a coordinated approach at CESR level to establish a list of minimum records. Such a list will contribute to a consistent implementation of MiFID and facilitate cross-border activities of investment firms.

MiFID's Implementing Directive establishes that each Member State shall draw up and maintain a list of minimum records. We understand that CESR's recommendation may not limit Member States' requirements and that other records may have to be kept to comply with the provisions of MiFID Level 1. However, EFAMA strongly believes that Member States should limit the number of records required to a commonly agreed list and avoid unnecessary "goldplating", in view of the costs involved.

In reply to CESR's specific questions:

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

EFAMA fully agrees.

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 find appropriate the list of records applying to asset managers.

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

No, we believe that no specific requirement is necessary regarding recordkeeping in regard to the provision of investment advice. Art. 13(6) of the Level 1 Directive already requires the investment firm to keep records of all services provided in order to prove compliance with MiFID's obligations. In view of the different possibilities of providing investment advice (depending on the distribution channel, type of client, instruments involved, etc.), any prescriptive list of records might prove quite burdensome and ill-suited to the situation. The choice of records should therefore be left to the investment firm providing the investment advice.

In reference to the suggested items for the list of minimum records, we have the following comments:

Order received or arising or decision to deal taken in providing the service of portfolio management

We find some language unclear. For example, the wording "order arising" needs to be clarified.

Regarding a “decision to deal”, only the decision that directly results in the creation of a transaction order should be regarded as such, not a general decision to modify the composition of a portfolio or a change in asset allocation that are not meant to be immediately implemented.

Both in the case of an order received and in the case where a portfolio manager takes a decision that results in the creation of an order to buy or sell financial instruments, a record should be created immediately after the reception or the creation of the order. Under special circumstances, however, it should be possible to extend the time to create the record by a reasonable period.

Re-allocation, Orders executed on behalf of clients and Transmission of order received by the investment firm

In both cases, EFAMA agrees that a record should be created immediately after the reception or the creation of the order. Under special circumstances, however, it should be possible to extend the time to create the record by a reasonable period.

Orders executed on behalf of clients and Orders carried out (other than those falling under the following row)

The distinction between “orders executed” and “orders carried out” is unclear, and the first item (Line 11) should refer to Art. 8(1) of Regulation (EC) 1287/2006 instead of Art. 47(1) of Directive 2006/73/EC.

Client financial instruments available for, and subject to, stock lending activities

In the case of pool lending or agency lending arrangements, the decision on the choice of instruments and the timing of lending is delegated to another entity, while the portfolio manager only reports the assets available for lending and receives the details of lending transactions after their conclusion. Under these circumstances, it is possible for portfolio managers to create immediately records of the stocks available for lending, but recording of assets being effectively lent out can only take place after receipt of the respective information from the agent.

The ability to engage in stock lending and generate additional revenues for clients should not be jeopardized by recordkeeping requirements. As agency lending arrangements imply considerable benefits for asset managers because they allow for a material reduction in administrative costs relating to securities lending, it should be considered sufficient for the portfolio manager to create a record immediately upon notification from the lending agent.

The firm’s business and internal organisation

The extent of records required under Art. 5(1)(f) should be proportionate and limited to substantial organizational matters.

We remain at your disposal should you have any questions regarding our comments.

Steffen Matthias
Secretary General

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