

CESR  
The Committee of European  
Securities Regulators  
11-13 avenue de Friedland  
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By E-mail

Düsseldorf, 27. November 2006  
449/522

**The list of minimum records in Article 51 (3) of the MIFID implementing Directive; Public Consultation**

Dear Sir(s):

We appreciate the opportunity to comment on the Consultation Paper mentioned above and would like to submit our comments as follows:

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

In principle we agree that the proposed common list of minimum records is a useful tool to enable the investment industry to identify those particular documents that fall within the scope of the documentation requirements.

Harmonisation of record retention requirements will provide support to investment firms operating internationally, especially, as we understand from our clients that even minor differences, deriving from different provisions within each EU-jurisdiction, lead to substantial organisational burdens on investment firms. Such detailed listing will provide additional comfort for all investment firms as to which specific documents are captured by the new rules.

In our view, it might be useful for investment firms if the relevant articles of MiFID and/or Level 2 documents to which the listed type of records refer were noted (e.g. by adding a separate column).

Furthermore, the specific storage regulation for documents related to investment services interact with an existing regime of record keeping requirements for institutions. The German Commercial Code (Article 257) and the Minimum Requirements for Risk Management set out by the Federal Financial Supervisory Authority (BaFin) stipulate differing retention periods. Thus advice regarding the interaction of the MiFID requirements with those of their respective national regimes might be of particular interest to investment firms. In addition to the list of minimum records as stipulated in Art 51 (3) Level 2 Directive CESR should encourage the competent authorities of each Member State to provide additional guidance on the interaction with other national retention regulation.

Further clarity as to these requirements would also be appreciated from the perspective of the auditor, since compliance with retention requirements is subject to an annual financial statement audit. A harmonised list with record retention details will support audits of investment firms operating on an EC-level (e.g. via EC-branches).

**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 reason?**

The items specified in the list seem suitable for the purpose of compliance with Art. 13 (6), 19 (7), 25 (2) of Level 1 Directive in conjunction with the Art. 51 (3) Level 2 Directive.

Nevertheless, there are few areas of high importance for both, investment firms and their clients which are not covered by the proposed list. Thus, we would like to introduce the following items:

- Best Execution Policy  
According to Art. 21 and 19 (1) of Level 1 Directive in conjunction with the Art. 44 et seq. Level 2 Directive investment firms have to set up a best execution policy. Accordingly they have to provide appropriate information to their clients and obtain their clients' prior consent to the execution policy.
- Appropriate information given to clients according to Art. 19 (3) of Level 1 Directive in conjunction with Art. 29, 30, 31 and 33 of Level 2 Directive.
- Documentation of the measures taken to fulfil the requirements to the Monitoring of compliance with the rules of the MTF (Art. 26 Level 1 Directive)
- Documentation of fulfilling the post trade disclosure according to Art. 28 Level 1 Directive.

In our opinion, these supplements would give more comfort to the investment firms when checking whether they have fulfilled their requirements relating to those areas that are completely new under the MiFID regime.

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

We do not believe there is any need to introduce any extra provision. Art 19 (7) Level 1 Directive in conjunction with the list drawn up by CESR appears sufficient to cover investment activities of firms in an appropriate manner. The provisions at Level 1 cover all investment services, including investment advice and the respective rights and obligation of each party to the service.

We would be pleased to answer any questions that you may have or discuss any aspect of this letter.

Yours sincerely



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