ITG Europe Response to Second CESR Consultation on First Mandates

2. Independence of compliance

Firstly, we think the imposition of compliance outsourcing in respect of small firms would be far to overt and egregious an interference with managerial discretion. It would also be an unacceptable strain on the cost base of the smallest, and most vulnerable firms. Generally, we feel the best approach is to mandate that senior management must preserve and promote the independence of compliance and then to leave senior management responsible for deciding how best to comply in their firm. CESR shouldn't underestimate the value of their "local" knowledge and should recognise that "local" management are always best placed to ensure compliance on a firm by firm basis. One possible approach is to impose more personal responsibility (rather than just firm responsibility) as the FSA does with its approved persons regime i.e. by mandating that senior management could face mandatory regulatory sanction for failing to take all reasonable steps to ensure the independence of compliance; and by mandating that compliance officers too could face personal regulatory sanctions for failing to take all reasonable steps to ensure the independence of their own departments.

Appropriate "incentivisation" in this area would be much more powerful that over prescriptive regulations proposing to micro-manage the firms.

3. Tape recording requirement

We don't believe the cost of a 5 year storage requirement would be prohibitive. However, we don't believe CESR has made any case for the benefits. It is doubtful that disputes regarding an order given over the phone would arise after the passing of 6 months, so we consider the 1 year period to be more than enough. Does CESR have any empirical evidence suggesting current arrangements (where records are kept for a year) have been found wanting?

8. Methods and Arrangements for Reporting Financial Transactions

ITG Europe supports the proposed CESR approach.

9. Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments

We do believe it is very important that the responsibility of competent authorities to collate all reports for instruments within their remit (even when executed outside of their own jurisdiction) does not fall on the firms themselves. We are glad that CESR recognises this. It would be undesirable in the extreme for firms to have to set up reporting arrangements with more than one regulator **or with the relevant market in respect of trading conducted outside of that relevant market.**